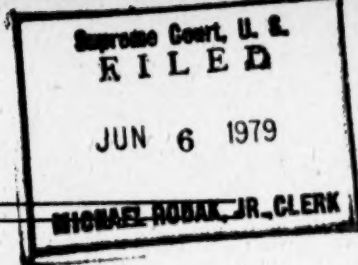


APPENDIX



**In the Supreme Court of the United States**

OCTOBER TERM, 1978

No. 78-990

---

UNITED STATES OF AMERICA,

*Petitioner*

—v.—

CLIFFORD BAILEY, ET AL.

1

---

UNITED STATES OF AMERICA,

*Petitioner*

—v.—

JAMES COGDELL

---

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

PETITION FOR CERTIORARI FILED DECEMBER 18, 1978  
CERTIORARI GRANTED MARCH 19, 1979

**In the Supreme Court of the United States**

OCTOBER TERM, 1978

**No. 78-990**

---

UNITED STATES OF AMERICA,

*Petitioner*

—v.—

CLIFFORD BAILEY, ET AL.

---

UNITED STATES OF AMERICA,

*Petitioner*

—v.—

JAMES COGDELL

---

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

**I N D E X**

	Page
Relevant Docket Entries .....	1
Original Indictment (Bailey, Cooley, Walker, Cogdell) .....	9
Retyped Indictment (Bailey, Cooley, Walker) .....	12
Retyped Indictment (Cogdell) .....	15
Defendants' Proposed Instruction No. 1 .....	17
Defense Exhibit (Defendant Bailey) No. 10 .....	18
Transcript of Proceedings, March 8, 1977 (Bailey et al. trial) .....	19
Testimony of Ronald James Harvin, Supervisor of Record Office, New Detention Center .....	21
Testimony of Barry Colvert, FBI Special Agent .....	25



Transcript of Proceedings, March 9, 1977 (Bailey et al. trial) .....	29
Government rests; defense motions .....	30
Testimony of Bernard Eugene Wilson, Inmate .....	33
Colloquy on duress defense .....	52
Testimony of Lester Delane Robinson, Assistant Administrator for Operations, New Detention Center ....	54
Transcript of Proceedings, March 10, 1977 (Bailey et al. trial) .....	68
Testimony of Lester Delane Robinson (continued) .....	72
Testimony of Barry Orlando Trent, Correction Officer, New Detention Center .....	86
Testimony of Oliver Boling, Inmate .....	92
Testimony of Garland Hines, Inmate .....	105
Testimony of Defendant Cooley .....	113
Testimony of Dr. Samuel L. Bullock, Physician, Department of Corrections .....	132
Testimony of Defendant Bailey .....	141
Transcript of Proceedings, March 11, 1977 (Bailey et al. trial) .....	153
Testimony of Defendant Bailey (continued) .....	153
Testimony of Michael Thomas Dozier-Beay, Inmate .....	180
Testimony of Vincent Walker, Brother of Defendant Walker .....	187
Transcript of Proceedings, March 14, 1977 (Bailey et al. trial) .....	189
Court statement on duress .....	189
Testimony of Dr. Aris Karas, Staff Psychiatrist, U.S. Penitentiary, Leavenworth .....	189
Testimony of Defendant Walker .....	194
Court ruling on duress .....	201
Testimony of William Fluharty, FBI Special Agent .....	201
Testimony of Joel Dean, FBI Special Agent .....	203
Testimony of Major William Long, Correctional Supervisor, New Detention Center .....	205
Defense motions and discussion of instructions .....	213
Instructions to the jury .....	221

Transcript of Proceedings, May 6, 1977 (Cogdell pretrial hearing) .....	226
Transcript of Proceedings, May 9, 1977 (Cogdell trial) (colloquy on duress) .....	228
Transcript of Proceedings, May 10, 1977 (Cogdell trial) (instructions to jury) .....	231
Order Granting Certiorari, March 19, 1979 .....	234
The following opinions, judgments, and orders of the United States Court of Appeals for the District of Columbia Circuit have been omitted in printing this appendix because they appear on the following pages in the appendix to the printed Petition for Certiorari:	
In <i>United States v. Bailey et al.</i> :	
Opinion, July 12, 1978 .....	1a
Judgment, July 12, 1978 .....	93a
Order amending opinion, July 14, 1978 .....	95a
Order denying Government's petition for rehearing, October 19, 1978 .....	97a
Order denying Government's suggestion for rehearing <i>en banc</i> , October 19, 1978 .....	98a
In <i>United States v. Cogdell</i> :	
Opinion, July 12, 1978 .....	100a
Judgment, July 12, 1978 .....	114a
Order denying Government's petition for rehearing, October 19, 1978 .....	116a
Order denying Government's suggestion for rehearing <i>en banc</i> , October 19, 1978 .....	117a

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Crim. No. 76-735

UNITED STATES OF AMERICA

v.

1. CLIFFORD BAILEY
2. RONALD CLIFTON COOLEY
3. JAMES COGDELL, a/k/a JAMES COGWELL
4. RALPH WALKER

DOCKET ENTRIES \*

DATE	PROCEEDINGS
1976	
Nov 23	Defs. #1, 2, 3, 4: Indictment filed.
	Defs. #1, 2, 3: Defendants committed: Commitment issued.
	Def. #4: Bench warrant ordered and issued upon presentment of indictment.
Nov 30	Defs. #1, 2, 3, 4: Counsel appointed.
Dec 2	Defs. #1, 2, 3: Arraignment: pleas of not guilty entered; trial set for 1/10/77.
	Def. #4: Fugitive.
Dec 16	Def. #4: Arraigned; plea of not guilty entered; trial set for 1/10/77.
1977	
Jan 3	Def. #3: Motion of John J. Hurley to withdraw as counsel for Def. Cogdell.
Jan 5	Def. #3: Status hearing; court vacates order appointing John J. Hurley as counsel for Def. Cogdell, and appoints Albert Overby as counsel.
Jan 10	Def. #3: Motion for mental examination granted.

\* Entries deemed irrelevant by the parties have been omitted.

DATE	PROCEEDINGS
1977	
Jan 12	Def. #3: Order dated 1/11/77 vacating John Hurley as counsel and appointing Albert Overby <i>nunc pro tunc</i> issued.
Jan 13	Def. #3: Def.'s motion for commitment to St. Elizabeth's Hospital for mental examination granted.
Feb 3	Def. #3: Letter from St. Elizabeth's Hospital stating Def. competent to stand trial.
Feb 23	Def. #3: Motion of Def. to dismiss indictment filed.
Feb 23	Def. #3: Motion of Def. for severance and to excuse filed.
Mar 8	Def. #3: Def.'s counsel engaged in other proceedings; case severed on court's own motion. Def. #1, 2, 4: Jury sworn; trial begins; respited until 3/9/77.
Mar 9	Def. #1, 2, 4: Trial resumed; respited until 3/10/77.
Mar 10	Def. #1, 2, 4: Trial resumed; respited until 3/11/77.
Mar 11	Def. #1, 2, 4: Trial resumed; respited until 3/14/77.
Mar 14	Def. #1, 2, 4: Trial resumed; retyped indictment. Def. proposed instruction No. 1—denied as submitted. Verdict: Guilty each Def. as indicted on Counts 1, 2 & 3; jury discharged.
Mar 21	Def. #4: Def. escaped custody while being transported to D.C. General Hospital; bench warrant ordered and issued.
Mar 23	Def. #3: Status hearing; trial set for 5/9/77.

DATE	PROCEEDINGS
1977	
Apr 7	Def. #2: Sentenced to five years' imprisonment to run consecutively to any sentence now being served, subject to the provisions of 18 U.S.C. 4205(b)(2); judgment and commitment issued.
Apr 12	Def. #1: Sentenced to five years' imprisonment to run consecutively to any sentence now being served, subject to the provisions of 18 U.S.C. 4205(b)(2); judgment and commitment issued.
Apr 14	Def. #2: Notice of Appeal filed.
Apr 20	Def. #1: Notice of Appeal filed.
May 3	Def. #3: Motion to dismiss pursuant to 18 U.S.C. 3161(c) filed by Def.
May 6	Def. #3: Motion to dismiss indictment for lack of speedy trial heard and denied.
May 9	Def. #3: Motion to dismiss indictment because of violation of 45 day rule denied; jury sworn; trial begins; respited until 5/10/77.
May 10	Def. #3: Trial resumed; guilty verdict returned for violation of 18 U.S.C. 751(a). Def. #3: Retyped indictment; Def.'s proposed jury instructions denied; Gov't submits opposition to Def.'s oral motion to dismiss for violation of Interstate Agreement on Detainers (IAD).
May 18	Def. #4: Bench warrant returned executed.
May 19	Def. #4: Def. sentenced to five years' imprisonment to run consecutively to any sentence now being served, subject to the provisions of 18 U.S.C. 4205(b)(2). Def. #4: Notice of Appeal filed.
May 26	Def. #3: Gov't moved for leave to file certified copies of exhibits of Circuit Court of Fairfax County, Virginia.
Jun 3	Def. #3: Reply to gov't's opposition to motion to dismiss indictment for violation of IAD filed by Def.



---

DATE	PROCEEDINGS
------	-------------

---

1977

Jun 9 Def. #3: Opposition to Def.'s renewed motion to dismiss indictment for violation of IAD filed by gov't.

Jun 20 Def. #3: Memorandum on motion to dismiss filed by Def.

Jul 6 Def. #3: Def's. motion to set aside conviction heard and denied. Def. sentenced to five years' imprisonment to run consecutively to any Federal sentence now being served; judgment and commitment issued.

Def. #3: Notice of Appeal filed.

Jul 12 Def. #3: Court issues order directing Warden, Lorton Reformatory to provide Def. with access to law library, to arrange for transfer of his papers and personal documents to that facility, and to transport Def. by bus rather than by van in the future.

Jul 23 Def. #3: Court issues memorandum denying Def's. motion to dismiss indictment.

Jul 24 Def. #3: D.C. Corporation counsel moves to vacate order of July 12.

Aug 14 Def. #3: Opposition to motion to vacate order of July 12 filed by Def.

Nov 1 Def. #3: Motion for clarification of sentence filed by def.

1978

Feb 3 Def. #3: Def's. motion for clarification of sentence denied.

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DOCKET ENTRIES

77-1404

UNITED STATES OF AMERICA

v.

CLIFFORD BAILEY

---

DATE	PROCEEDINGS
------	-------------

---

1977

May 13 Appeal docketed.

Aug 16 Order consolidating with Nos. 77-1413 (Cooley), 77-1502 (Walker), 77-1602 (Cogdell), for consideration on the merits.

Oct 31 Order consolidating No. 77-1602 (Cogdell) with Nos. 77-1404, 77-1413, and 77-1502 vacated.

Dec 5 Oral Argument before Wright, McGowan, and Wilkey, JJ.

1978

Jul 12 Judgment entered reversing judgments of the District Court and remanding for a new trial.

Oct 19 Government petition for rehearing with suggestion for rehearing *en banc* denied.

77-1413

UNITED STATES OF AMERICA

v.

RONALD CLIFTON COOLEY

DATE	PROCEEDINGS
1977	
May 13	Appeal docketed.
Aug 16	Consolidated with Nos. 77-1404 (Bailey), 77-1502 (Walker), and 77-1602 (Cogdell), for consideration on the merits.
Oct 31	Order consolidating No. 77-1602 (Cogdell) with Nos. 77-1404, 77-1413, 77-1502 vacated.
Dec. 5	Oral argument before Wright, McGowan, and Wilkey, JJ.
1978	
Jul 12	Judgment entered reversing judgment of District Court and remanding for a new trial.
Oct 19	Government petition for rehearing with suggestion for rehearing <i>en banc</i> denied.

77-1502

UNITED STATES OF AMERICA

v.

RALPH WALKER

DATE	PROCEEDINGS
1977	
Jun 27	Appeal docketed.
Aug 16	Consolidated with Nos. 77-1404 (Bailey), 77-1413 (Cooley), and 77-1604 (Cogdell) for consideration on the merits.
Oct 31	Order consolidating No. 77-1602 (Cogdell) with Nos. 77-1404, 77-1413, and 77-1502 vacated.
1978	
Jul 12	Judgment entered, reversing judgments of the District Court and remanding for a new trial.
Oct 19	Government petition for rehearing with suggestion for rehearing <i>en banc</i> denied.



77-1602

UNITED STATES OF AMERICA

v.

JAMES T. COGDELL

## DATE

## PROCEEDINGS

1977

Aug 8 Appeal docketed.

Aug 16 Consolidated with Nos. 77-1404 (Bailey), 77-1413 (Cooley), and 77-1502 (Walker) for disposition on the merits.

Oct 13 Order consolidating with Nos. 77-1404, 77-1413, and 77-1502 vacated.

1978

Jul 12 Judgment entered reversing judgment of District Court and remanding for a new trial.

Oct 19 Government petition for rehearing with suggestion for rehearing *en banc* denied.UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Sworn in on October 4, 1976

Criminal No.

Grand Jury Original

Violation: 18 U.S.Code § 751 (a)  
(Escape of Prisoner From Custody)  
22 D.C.Code § 2601  
(Prison Breach)

THE UNITED STATES OF AMERICA

v.

CLIFFORD BAILEY  
RONALD CLIFTON COOLEY  
JAMES T. COGDELL  
Also known as James T. Cogwell  
RALPH WALKER

The Grand Jury Charges:

## FIRST COUNT:

On or about August 26, 1976, within the District of Columbia, CLIFFORD BAILEY, having been lawfully committed to the custody of the Attorney General on March 6, 1973 and April 18, 1973, by virtue of a conviction and sentence imposed by the United States District Court for the District of Maryland in Criminal Case Numbers 72-0599 and 73-077, respectively, did unlawfully and wilfully flee and escape from such custody.

(Violation of Title 18, U.S.Code, Section 751 (a))

**SECOND COUNT:**

On or about August 26, 1976, within the District of Columbia, RONALD CLIFFTON COOLEY, having been lawfully committed to the custody of the Attorney General on May 20, 1976, by virtue of a conviction and sentence imposed by the United States District Court for the District of Columbia in Criminal Case Number 76-17, did unlawfully and wilfully flee and escape from such custody.

(Violation of Title 18, U.S. Code, Section 751(a))

**THIRD COUNT:**

On or about August 26, 1976, within the District of Columbia, JAMES T. COGDELL, also known as James T. Cogwell, having been in the custody under and by virtue of a commitment issued under the laws of the United States by a Judge of the Superior Court of the District of Columbia following his arrest on a charge of a felony, did unlawfully and wilfully flee and escape from such custody.

(Violation of Title 18, U.S. Code, Section 751(a))

**FOURTH COUNT:**

On or about August 26, 1976, within the District of Columbia, RALPH WALKER, having been lawfully committed to the custody of the Attorney General on April 11, 1973, by virtue of a conviction and sentence imposed by the United States District Court for the Eastern District of Virginia (Alexandria Division) in Criminal Case Number 27-73A, did unlawfully and wilfully flee and escape from such custody.

(Violation of Title 18, U.S. Code, Section 751(a))

**FIFTH COUNT:**

On or about August 26, 1976, within the District of Columbia, CLIFFORD BAILEY, having been committed to a penal institution of the District of Columbia, did

escape therefrom and from the custody of an officer thereof.

(Violation of Title 22, D.C. Code, Section 2601)

**SIXTH COUNT:**

On or about August 26, 1976, within the District of Columbia, RONALD CLIFTON COOLEY, having been committed to a penal institution of the District of Columbia, did escape therefrom and from the custody of an officer thereof.

(Violation of Title 22, D.C. Code, Section 2601)

**SEVENTH COUNT:**

On or about August 26, 1976, within the District of Columbia, JAMES T. COGDELL, also known as James T. Cogwell, having been committed to a penal institution of the District of Columbia, did escape therefrom and from the custody of an officer thereof.

(Violation of Title 22, D.C. Code, Section 2601)

**EIGHTH COUNT:**

On or about August 26, 1976, within the District of Columbia, RALPH WALKER, having been committed to a penal institution of the District of Columbia, did escape therefrom and from the custody of an officer thereof.

(Violation of Title 22, D.C. Code, Section 2601)

A TRUE BILL:

/s/ Anna E. Chambers  
Foreman

/s/ Earl T. Silbert

Attorney of the United States in  
and for the District of Columbia

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Sworn in on October 4, 1976

Criminal No. 76-735

Grand Jury Original

Violation: 18 U.S.C.Code § 751 (a)

(Escape of Prisoner From Custody)

22 D.C.Code § 2601

(Prison Breach)

THE UNITED STATES OF AMERICA

v.

CLIFFORD BAILEY  
RONALD CLIFTON COOLEY  
RALPH WALKER

The Grand Jury Charges:

FIRST COUNT:

On or about August 26, 1976, within the District of Columbia, CLIFFORD BAILEY, having been lawfully committed to the custody of the Attorney General on March 6, 1973 and April 18, 1973, by virtue of a conviction and sentence imposed by the United States District Court for the District of Maryland in Criminal Case Numbers 72-0599 and 73-077, respectively, did unlawfully and wilfully flee and escape from such custody.

(Violation of Title 18, U.S.Code, Section 751 (a))

SECOND COUNT:

On or about August 26, 1976, within the District of Columbia, RONALD CLIFTON COOLEY, having been

lawfully committed to the custody of the Attorney General on May 20, 1976, by virtue of a conviction and sentence imposed by the United States District Court for the District of Columbia in Criminal Case Number 76-17, did unlawfully and wilfully flee and escape from such custody.

(Violation of Title 18, U.S.Code, Section 751 (a))

THIRD COUNT:

On or about August 26, 1976, within the District of Columbia, RALPH WALKER, having been lawfully committed to the custody of the Attorney General on April 11, 1973, by virtue of a conviction and sentence imposed by the United States District Court for the Eastern District of Virginia (Alexandria Division) in Criminal Case Number 27-73A, did unlawfully and wilfully flee and escape from such custody.

(Violation of Title 18, U.S.Code, Section 751 (a))

FOURTH COUNT:

On or about August 26, 1976, within the District of Columbia, CLIFFORD BAILEY, having been committed to a penal institution of the District of Columbia, did escape therefrom and from the custody of an officer thereof.

(Violation of Title 22, D.C.Code, Section 2601)

FIFTH COUNT:

On or about August 26, 1976, within the District of Columbia, RONALD CLIFTON COOLEY, having been committed to a penal institution of the District of Columbia, did escape therefrom and from the custody of an officer thereof.

(Violation of Title 22, D.C.Code, Section 2601)

SIXTH COUNT:

On or about August 26, 1976, within the District of Columbia, RALPH WALKER, having been committed



to a penal institution of the District of Columbia, did escape therefrom and from the custody of an officer thereof.

(Violation of Title 22, D.C.Code, Section 2601)

A TRUE BILL:

Foreman

Attorney of the United States in  
and for the District of Columbia

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Sworn in on October 4, 1976

Criminal No. 76-735-3

Grand Jury Original

Violation: 18 U.S.Code § 751 (a)

(Escape of Prisoner from Custody)

22 D.C.Code § 2601

(Prison Breach)

THE UNITED STATES OF AMERICA

v.

JAMES T. COGDELL

The Grand Jury Charges:

FIRST COUNT:

On or about August 26, 1976, within the District of Columbia, James T. Cogdell, having been in the custody under and by virtue of a commitment issued under the laws of the United States by a judge of the Superior Court of the District of Columbia following his arrest on a charge of a felony, did unlawfully and willfully flee and escape from such custody.

(Violation of Title 18, U.S.Code, Section 751 (a))

SECOND COUNT:

On or about August 26, 1976, within the District of Columbia, James T. Cogdell, having been committed to

a penal institution of the District of Columbia, did escape therefrom and from the custody of an officer thereof.

(Violation of Title 22, D.C.Code, Section 2601)

A TRUE BILL:

Foreman.

Attorney of the United States in  
and for the District of Columbia

## DEFENDANTS' PROPOSED INSTRUCTION NO. 1

### DURESS

A defendant is not criminally responsible for the commission of the crime of willingly and voluntarily escaping from jail if he committed the act of escaping from incarceration as a result of coercion exerted on him.

Coercion which would excuse the commission of a criminal act must result from:

- 1) Threatening [*sic*] conduct sufficient to create in the mind of a reasonable person the fear of death or serious bodily harm;
- 2) The conduct in fact caused such fear of death or serious bodily harm in the mind of the defendant;
- 3) The fear or duress was operating upon the mind of the defendant at the time of the alleged act; and
- 4) The defendant committed the act to avoid the threatened [*sic*] harm.

When evidence of coercion or duress is present, the Government must prove beyond a reasonable doubt that the defendant did not act under coercion. In other words, if you have a reasonable doubt whether or not the defendant acted under coercion as the court has defined it to you, your verdict must be not guilty.

*People v. Harmon*, 394 Mich. 625, 232 N.W.2d 187 (1975); *People v. Luther*, 394 Mich. 619, 232 N.W.2d 184 (1975); Model Penal Code, Section 2.09 (Proposed Official Draft, 1962).

/s/ Gasch, J.

[denied—as submitted]



DEFENDANT BAILEY'S EXHIBIT No. 10

[SEAL]

SUPERIOR COURT OF THE  
DISTRICT OF COLUMBIA  
WASHINGTON, D.C. 20001

Date—December 28, 1976

Clifford Bailey—E1  
District of Columbia Jail  
19th and D Streets, S.E.  
Washington, D.C. 20003

RE: Clifford Bailey-et v. D.C. Govt. et al.

Dear Mr. Bailey:

This is to inform you that your petition to proceed in forma pauperis has been granted by the Superior Court, and has been assigned Civil Action Number CA 12495-76. Enclosed is a copy of the judge's order.

Summonses and Marshal's Service Forms are attached for your convenience. Please fill out these forms and return them for Marshal Service.

You are required to provide the Court with the original complaint and summons for filing. In addition, you must include copies of both the complaint and summons for each defendant.

All correspondence relating to the above case should reflect the Civil Action Number.

JOSEPH M. BURTON  
Clerk

By /s/ [Illegible]  
Deputy Clerk

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Cr. No. 76-735-4

UNITED STATES OF AMERICA

v.

CLIFFORD BAILEY, DEFENDANT  
RONALD COOLEY, DEFENDANT  
RALPH WALKER, DEFENDANT

Washington, D.C.  
March 8, 1977

The above-entitled matter came on for trial in open court at 10:10 o'clock, A.M., before:

THE HONORABLE OLIVER GASCH  
United States District Judge, and a Jury.

APPEARANCES:

Counsel for the Government:  
STEVEN SCHAARS, ESQ.  
Assistant United States Attorney

Counsel for defendant Bailey:  
JOHN E. DRURY, ESQ.

Counsel for defendant Cooley:  
ROBERT ROBBINS, ESQ.

RALPH WALKER, pro se

Also present: BRUCE ARMSTRONG, ESQ.

[2] PROCEEDINGS

THE DEPUTY CLERK: Criminal Case No. 76-735-4, The United States of America v. Clifford Bailey, Ronald Cooley and Ralph Walker.

(Defendants present in open court:)

THE DEPUTY CLERK: Shall I send for a jury panel?

THE COURT: Yes, Mr. Patterson.

MR. SCHAARS: Your Honor, if the record may reflect, I have served upon each defendant in this case and each counsel those acting as counsel for the defendants and those standing in as an assistant to the defendants acting in their own behalf, copies of a memorandum of law which we have filed with the Court this morning concerning the defense of duress or necessity, and I think the record should reflect that, and with regard to that defense we would suggest that based on the representations of those defendants who intend to raise that that they certainly on the face of this case cannot raise that defense, because each of them failed to report promptly to any sort of law enforcement, Congressional or judicial authority after their escape to, in an attempt to redress their grievances. I suggest that our memorandum addresses that issue specifically and in detail that in order to raise that defense one must be able to demonstrate that they presented themselves to the proper authorities for the redress of any grievance or anything that necessitated an [3] escape.

THE COURT: All right, Mr. Schaars, we will take that point up later when we reach the defense.

MR. SCHAARS: Yes, Your Honor.

\* \* \* \*

[12] (Whereupon, Government's Exhibits 1, 1-A, 1-B, 2, 2-A, 3 and 3-A were received into evidence.)

MR. SCHAARS: I would like to publish these before the jury by reading portions to them at this time.

Ladies and gentlemen of the jury, what has been [13] marked and admitted into evidence in this case is Government's Exhibit 1, 2 and 3.

\* \* \* \*

Government's Exhibit Number 1 is what is entitled: Writ of Habeas Corpus Ad Testificandum, which bears a seal from the Superior Court of the District of Columbia and the signature of Sylvia Bacon, Associate Judge, Superior Court of the District of Columbia.

It is a writ of habeas corpus in the case of the United States of America v. Brad King. It is a writ directing the warden of the United States Penitentiary, Leavenworth, Kansas, [sic] United States Marshal for the District of Columbia and United States Marshal for the District of Kansas to produce the body of Mr. Clifford Bailey, by you imprisoned and detained to either the U.S. Marshal in and for the District of Columbia or the U.S. Marshal for the District of Kansas or one of their deputies, so that Mr. Bailey can be brought to the District of Columbia on June 5th of 1976, so that he would be available to testify for trial. In this particular case, United States v. Brad King on June 14th of 1976.

\* \* \* \*

[17] RONALD JAMES HARVIN

was called as a witness by and on behalf of the United States and after having been duly sworn was examined and testified as follows:

\* \* \* \*

[23] By Mr. Schaars:

Q All right, sir, I refer you to specifically Government's Exhibit 4. The face sheet, if I may show you a copy of it. I direct your attention to the upper left hand corner. [24] Whose name appears on that document, sir?

A Clifton Bailey.

Q Now, sir, I refer you to the right hand side of that document. One line down, where it says, "commitment date." Is there a date there?

A It is June the 1st 1976.

Q Sir, what is this document? What does it purport to be?

A This is a Face Sheet No. 1 that is completed upon commitment to the Detention Services.

Q What does this document reflect in terms of commitment?

A The date that an individual was received into custody.



Q Who is the individual here and when was he received in custody?

A Clifton Bailey. He was received on June 1st, 1976.

Q Now, sir, I'm going to refer you to the next Government exhibit that has been marked as 4. It would be 4-A, and ask if you can indicate to the ladies and gentlemen of the jury what that is.

A It is an Escape and Apprehension Form. It is used by the Department of Corrections.

Q Does a name appear on there, sir?

A Yes, sir.

Q Whose name is that?

[25] A Clifton Bailey.

Q Does it reflect any dates or times with regard to an escape?

A It reflects a date of escape at 5:35 A.M. on August 26th 1976.

Q Are Government's Exhibits 4 and 4-A related at all? You used the same name, sir.

A They are from the same institution.

Q Do they relate to the same individual?

A Yes, sir.

Q Now, sir, I'm going to invite your attention to what has been marked as Government's Exhibit 5. Is there a Face Sheet in connection with those exhibits, sir?

Mr. Harvin, I specifically draw your attention to what bears a photograph within those exhibits.

A This is an Escape and Apprehension Report.

Q Whose name is that, sir?

A Ronald Clifton Cooley.

Q Does that bear a date, sir?

A Yes, it does.

Q What date does that bear?

A August 26th.

Q Of what year, sir?

A 1976.

Q Now, sir, drawing your attention to the last [26] packet of documents which you have. Do you have what you referred to as a Face Sheet in connection with that packet?

A Yes, sir, I do.

Q What is the identification number of that piece of paper?

A 158630.

Q No, sir, I'm referring to the yellow stamp.

A Government's Exhibit 6.

Q Is there a name that appears on that, sir?

A Ralph Walker.

Q Is there a commitment date, sir?

A June 11th 1976.

Q What does that document reflect?

A That the individual was committed on that date in the custody of the Department of Corrections.

Q Now, sir, referring you to the next portion of the documentation labeled Government Exhibit 6 portion with a photograph on it. What yellow stamp appears on that, sir?

A That is Government Exhibit 6-A.

Q What does that document purport to be?

A It is the Escape and Apprehension Report that was filed on August the 26th 1976.

Q What is the name of the individual on that, sir?

A Ralph Walker.

Q What is the relationship of that document to the other document that you indicated bore the name Ralph Walker?

[27] A They are both from the same individual's record jacket.

Q Now, sir, have you had a chance to review the files of each of these gentlemen?

A Yes, I have.

Q The files of the Department of Corrections?

A Yes, sir.

Q You are familiar with the record keeping of the Department of Corrections?

A Yes, I am.

Q Are you familiar with the paper work that is undertaken and that is preserved when an individual is to be released from an institution?

A Yes, sir.

Q Is there paper work prepared when one is to be released with permission from an institution?

A Yes, sir.

Q Did you search these files to see if there was any such paper work in any one of these gentlemen's files? Did you search the files, sir?

A Yes, sir, I did search the files.

Q Were you able to discover whether or not there was any paper work or any forms or business records indicating that any one of these gentlemen was permitted to leave the institution on or about the 26th of August of 1976?

[28] A No, sir, there was no such paper.

Q If these gentlemen had been permitted to leave the Detention Facility would there have been paper work?

A Yes, sir, there would have been.

Q Now, sir, with regard to Mr. Cooley. Did you have an opportunity to review the file of Mr. Cooley?

A Yes, sir.

Q And does the file of Mr. Cooley reflect his coming to the institution?

A Yes, sir, it does.

Q Do you know what that date is, sir?

A I would have to check on the Face Sheet for that particular individual. I don't have that with me at this time.

Q Did you have an opportunity to review the documentation to determine whether or not Mr. Cooley was an inmate on August 25th of 1976?

A Yes, he was.

Q He was an inmate?

A Yes, sir.

Q On August 26th you have a sheet indicating an escape, is that correct, sir?

A Yes.

\* \* \*

[52] RE-CROSS EXAMINATION

By Mr. Drury:

Q Mr. Harvin, are the records that are under your supervision and the records that you have been re-

ferring to here this afternoon, are they the complete file of any inmate at the New or Old D.C. Jail?

A They are the complete file for the Department of Corrections that we have on hand.

\* \* \*

[56] Q And does defense exhibit number 2 reflect that same record? That would be Defense Exhibit No. 2 that you have in your possession, the folder?

A Oh, the folder itself? Yes, it does.

Q And he was brought back here to testify in a trial, is that correct on a habeas corpus ad testificandum?

A That is true.

Q And the escape occurred—does the subpoena note the date of the trial in Government's Exhibit No. 1?

A It says for the individual to be available to testify for trial in this case presently set for June 14th.

Q I see. Now, subsequent to June 14th, this assuming [57] testimony was given. Why was this—

THE COURT: Now, Mr. Drury, we all know there are many continuances in the Superior Court. There are many continuances in this Court.

MR. DRURY: Your Honor, I believe that we will be able to show that the case did take place in the month of June or early July, sir.

MR. SCHAARS: Your Honor, I don't see the relevancy of that as regards the Government's case and the cross-examination of this witness. It has nothing to do with whether or not he escaped.

THE COURT: Yes, I think that is correct.

MR. DRURY: I will move on to another subject, Your Honor.

THE COURT: All right.

\* \* \*

[62] BARRY COLVERT

was called as a witness by and on behalf of the United States and after having been duly sworn was examined and testified as follows:



## DIRECT EXAMINATION

By Mr. Schaars:

Q Sir, would you please state your name?

A My name is Barry Colvert.

[63] Q How are you employed, sir?

A I'm assigned as a Special Agent with the Washington Field Office of the F.B.I.

Q How long have you been so employed?

A Approximately fifteen years.

Q Is it then fair to say that in August of 1976 you were with the F.B.I.?

A That is correct.

Q I invite your attention to the 26th of August of 1976. Were you an F.B.I. agent at that time?

A Yes, sir, I was.

Q Do you recall whether or not you were on duty on that date?

A Yes, sir, I was.

Q Do you recall what your hours of duty were that day, sir?

A I think I came in at approximately 6:30 in the morning and worked until around 6:00 o'clock that night.

Q Now, sir, during the course of your tour of duty or your work hours on that particular day, did you become involved in, or assigned to the investigation of a jail break within the District of Columbia?

A Yes, sir, I was.

Q And, as a result of your participation in that investigation did you actually assist in the arrest of some [64] individuals who allegedly escaped?

A Yes, sir, I did.

Q Do you recall the names of the individuals whom you participated in the arrest of?

A Mr. Clifford Bailey. Mr. Ralph Walker. Mr. Ronald Cooley and Mr.—that would be it.

Q Now, sir, do you see any or all of those individuals in Court at this time?

A Yes, sir, I do.

Q If so I would ask that you identify them by location in the courtroom and by wearing apparel.

A Mr. Walker is seated at this end of the defense table with a burgandy or maroon sport coat on. Mr. Bailey seems to be wearing a blue shirt, and Mr. Cooley, seated at the far end of the table is wearing a green shirt.

Q Could you be a little bit more specific? There are at least three gentlemen over there with blue shirts on.

A The gentleman turning around, facing the Marshal with a blue chambray or prison type shirt on, and the other gentleman at the far end, between two gentlemen in the suits wearing a green wollen [sic] jacket over a light blue shirt.

Q Who is the last gentleman?

A Mr. Cooley.

Q I would ask that the record reflect that Mr. Colvert has in fact identified each of the defendants in this case.

[65] THE COURT: Very well.

By Mr. Schaars:

Q Now, sir, with regard to Mr. Bailey. Will you, if you know, advise the Court of the nature of your assistance when the arrest of Mr. Bailey occurred?

A It was on November the 19th, last year. The address was 1236 11th Street, Northwest in the 7th floor apartment, I believe Apartment 77.

Q Was that within the District of Columbia?

A Yes, sir, it was.

Q Did you assist in the arrest of the gentlemen whom you have identified in Court today?

A That is correct.

Q Now, with regard to Mr. Cooley, sir. Did you assist in that arrest?

A Yes, sir, I did.

Q Where did that take place and when?

A September 27th, last year. The address was 4229 2nd Place, Northeast.

Q Is that within the District of Columbia?

A It was in Washington, D.C.

Q One of the gentlemen you identified in Court today?

A That is correct.



Q Now, with regard to the last gentleman, Mr. Walker. Did you assist in the arrest of Mr. Walker?

[66] A Yes, sir, I did.

Q When did that take place, sir?

A December 13th last year at Number 39 Mississippi Avenue, Southeast in the basement apartment.

Q Is that within the District of Columbia?

A That is correct.

Q Is that the Mr. Walker whom you have identified in Court today?

A Yes, sir.

\* \* \* \*

### CROSS-EXAMINATION

By Mr. Drury:

Q Agent Colvert, did you say that you arrested Mr. Bailey or that you assisted in the arrest?

A I assisted in the arrest of Mr. Bailey.

[68] By Mr. Drury:

Q Directing your attention Agent Colvert to Defendant's Exhibit 3. I ask you whether you can identify that document, if so how can you?

A This is an F.D. 302 that reflects the apprehension of Mr. Clifford Bailey at 1236 11th Street.

Q Is that an official or recognized copy of the official document that contains the report by the Federal Bureau of Investigation as to the apprehension on the 19th of November of 1976 of Clifton Bailey?

A That is correct.

Q In the text of that document is there reference to the agents, Dean, Patriak, Fluharty and another agent?

A Yes, sir, there is.

Q Who is the other agent?

A Mr. Patrick, Mr. Murphy, Mr. Dean and Mr. Fluharty.

Q If you were present on the scene why is your name not present, mentioned in the body of that text?

A They were emerging from Apartment 77 with Mr. Bailey in custody when I came on the scene. I observed the arrest.

\* \* \* \*

## THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Cr. No. 76-735-4

UNITED STATES OF AMERICA

v.

CLIFFORD BAILEY, DEFENDANT  
RONALD COOLEY, DEFENDANT  
RALPH WALKER, DEFENDANT

Washington, D.C.

March 9, 1977

The above-entitled matter came on for further trial in open court at 9:50 o'clock, A.M., before:

THE HONORABLE OLIVER GASCH  
United States District Judge, and a Jury.

\* \* \* \*

[94] THE COURT: Now, with respect to the defense. The Court read the Federal cases which are cited on Page 6 of the memorandum submitted by the Government. The cases stated, particularly Joiner, Woodring, Miller and Coggins, I think state the law that would be applicable to this case. I am not sure that I understand the relevancy of the cases cited by Mr. Drury, one of them was not an escape case.

MR. DRURY: Cassell is not an escape case, Your Honor. It deals with the Jones-Miller Act, narcotics offense, but Witsnow is a case—

THE COURT: That was tried by Judge Smith. He made no findings and conclusions. The matter was referred back to him and subsequently affirmed.

MR. DRURY: Yes, Your Honor. But it dealt with the [95] essential element of escape under the Federal Statute and that was criminal intent, and as you know the Cassell case is cited in the Snow case and the Cassell case, perhaps is the touch-stone for the argument that

I am making and it is refined in Snow and it is refined by Judge Bazelon, which he says that a necessary element of any criminal offense under escape, under the crime charged here is that, that of criminal intent and that there must be a showing that the act was committed or at least the defense should have the opportunity to show that the act was committed under compulsion such as apprehension of serious and immediate bodily harm, and that that act was involuntary and therefore not criminal.

THE COURT: Well, I understand that theory. Of course the cases also mention the obligation of one who escapes under those conditions to turn himself in having affected the escape.

MR. DRURY: Your Honor, I would contend that Snow is controlling. The cases that the Court has referred to in memorandum submitted by Mr. Schaars are not cases dealing with the law in the District of Columbia.

THE COURT: Well, in the District of Columbia it's no different.

MR. DRURY: Your Honor, I believe from my research in this case, and I spent a short time this morning attempting to find further authority for the argument that I am [96] asserting, in the library, and I believe the issue is unresolved in the District of Columbia.

THE COURT: Certainly doesn't resolve it.

MR. DRURY: I think Snow says, Your Honor, that the defense should be allowed to submit evidence negating criminal intent.

THE COURT: Well, I am disposed to agree with that.

\* \* \*

[122] MR. SCHAARS: Your Honor, the Government has no further evidence to offer in its case in chief at this time.

[123] THE COURT: All right.

MR. SCHAARS: The Government, accordingly, rests, Your Honor.

THE COURT: All right.

Ladies and gentlemen, you may step into the jury room, briefly.

(Whereupon, the jury retired to the jury room and the following proceedings were had out of their hearing and presence:)

MR. SCHAARS: Your Honor, if I may be heard just briefly before Mr. Drury begins. I have rested, but I rested for the purposes of the jury having heard that. It is my intention to move into evidence in this case all exhibits which have not been admitted to this date and at the same time I would seek leave to, at the conclusion of the case withdraw the original copies of those items of evidence which do not have Xerox copies in evidence now and substitute true and accurate Xerox copies for those documents.

THE COURT: Are there any Government exhibits that have not been received?

THE DEPUTY CLERK: No, Your Honor. All of the Government exhibits have been moved in and received.

MR. DRURY: I see no objection to any of the change in documents except one. I note that this master fingerprint card, which is Government's Exhibit 13-A notes no [124] date. However, it notes on the second page a crime of attempted robbery. I would ask that that be—that the words, "attempted robbery", be deleted from this document.

MR. SCHAARS: We certainly have no objection to that, Your Honor.

THE COURT: That will be done.

Now, gentlemen, it is my impression that the Government has made out a prima facie case. If any of you have anything specific to bring to my attention with reference to failure of proof on the part of the Government I will hear you briefly.

MR. DRURY: I want to note that I move for a motion for judgment of acquittal with regard to Clifton Bailey.

I would contend that the Government has not proved identity in this case. Moreover, I would contend that the



Government is under an obligation to demonstrate the means with which this escape occurred. This has been a documentary case. I believe that because it has been a documentary case, and because it has been demonstrated, at least in part that through Government witnesses that there is a potential for human error in the compilation of documents. I believe that that supports the reason why there should be a showing of the manner in which, the exact manner, the exact location where the escape occurred, and that the Government should not proceed on a mere documentary case and showing that the man was [125] there one day and that he was absent on August 26th.

THE COURT: I will overrule you on that. Ghoram and Jones, the Government was unable to prove how they knotted the sheets together and got out of the third floor of the jail or whatever it was, so I will overrule you on that.

MR. DRURY: Court's indulgence for one moment. I want to point this document out to Mr. Patterson. 13-A, second line down, under "crime".

MR. SCHAARS: We would be happy to provide Mr. Patterson with another Xerox copy of that page, the attempted robbery, so there is no scratching on there at all.

THE COURT: All right. Now, Mr. Robbins.

MR. ROBBINS: I too wish to move for a judgment of or a motion for acquittal on behalf of Mr. Cooley. I adopt Mr. Drury's arguments for the record and also note that the failure in the case against Mr. Cooley, specifically with the records is that there has been no records introduced to show that Mr. Cooley was in the New D.C. Jail on August 26th or on the dates before. The records indicate that he was committed to the D.C. Jail which a witness said commonly meant the Old Jail. He was committed there on April the 10th of 1976. There were no records and no testimony to indicate that he was there prior to—in the New Jail prior to August the 26th, and this points even further to the problems with the Government's case in that it was only documentary evidence, [126] not testimonial evidence. There was no

testimony either to indicate that Mr. Cooley was in the New Jail prior to August the 26th, only the documentary evidence which fails on that point.

THE COURT: All right. Same ruling.

Now, Mr. Walker. Do you wish to adopt the motions previously made?

THE DEFENDANT WALKER: Yes. Defendant wishes to adopt both counsel Robbins and Drury.

THE COURT: All right. Same ruling.

THE DEFENDANT WALKER: As far as judgment of acquittal is concerned?

THE COURT: Yes.

THE DEFENDANT WALKER: All right.

\* \* \* \*

[149] BERNARD EUGENE WILSON

was called as a witness by and on behalf of the defendant Ralph Walker and after having been sworn was examined and testified as follows:

#### DIRECT EXAMINATION

##### BY THE DEFENDANT WALKER:

Q Mr. Blake, would you state your full name to the Court, please?

A Bernard Eugene Wilson.

Q Bernard Eugene Wilson?

A Yes.

Q All right. Mr. Wilson, where are you presently located, or where do you presently reside?

A At Lorton Reformatory.

Q Mr. Blake, I call your attention—Excuse me. Where [150] were you, or what was your residence during the period of between August the 1st and August the 26th?

A I believe I had been at 1901 D Street, Southeast, District Jail.

Q All right. Was there any particular housing unit that you were housed in or do you remember the housing unit that you were housed in at that time?

A Yes. Northeast One.

Q The Northeast One housing unit?

A Yes. Dead lock.

Q Of the District of Columbia Detention Facility?

A Yes.

Q Is that a maximum security section?

A Yes.

Q Do you recall whether an inmate by the name of Ralph Walker, El, that would be myself, was housed with you there?

A Yes.

Q All right. Mr. Blake on any occasion there do you recall any burnings or fires that took place between August the 1st and August 26th?

A Every day.

Q Every day?

A Every day.

Q Do you recall any inmates of the Northeast One housing unit complaining of any type of illnesses and specially [151] concerning smoke inhalation?

A Yes. The ventilation unit, you know, all of windows and so forth, all of the inmates started breaking out the windows for air inside of the units.

Q You say that there is no ventilation or there is no air? In other words, are you saying that there are no open windows?

A No open windows.

Q At the Detention Facility?

A Probably is now, but then there wasn't.

Q You say that also that inmates had started breaking out windows?

A Yes.

Q Were these windows broken out as a direct result of the fires that were set?

A Yes.

MR. SCHAARS: Object. The extent of this gentleman's knowledge as to why they were broken out—

THE COURT: I think if you tell him under what circumstances were the windows broken out maybe he can answer it without a leading question.

BY THE DEFENDANT WALKER:

Q Under what circumstances were the windows broke out Mr. Wilson?

A For air because of smoke.

[152] Q Did you, yourself, personally suffer any type of smoke inhalation?

A Yes.

Q Did you complain to the authorities about suffering from any type of smoke inhalation?

A Yes.

Q Were you ever able to receive any type of medical attention because of your complaints?

A No.

Q How often did you complain, Mr. Wilson?

A More than ever day that I stayed down there. I stayed down there almost a month and a half.

Q And how often did you say burnings took place?

A Just about every day I was down there.

Q Were there, to your knowledge, any physical beatings by the authorities there at the jail while you were there?

MR. SCHAARS: Objection, Your Honor. It is another leading question.

THE COURT: Overruled.

THE DEFENDANT WALKER: Would you answer the question, Mr. Wilson?

THE WITNESS: Yes. I got beat a few times.

BY THE DEFENDANT WALKER:

Q You say that you were personally beat?

A Yes.

[153] Q Who were you beat by, Mr. Wilson?

A A guard by the name of Officer Webb.

Q Would the record reflect that Mr. Wilson indicates that he was beaten by an officer by the name of Mr. Webb.

THE COURT: Yes. The testimony is reflected in the record.



BY THE DEFENDANT WALKER:

Q Do you remember on what date you were beaten, Mr. Blake?

A No, I can't—

Q Or, Mr. Wilson.

A I can't remember all of the dates it happened, but I know incidents that did take place, you know.

Q Do you remember what month it took place?

A Yes. August.

Q August?

A Yes, it has been August.

Q Do you remember what the beating resulted from?

A Yes.

Q Would you explain to the Court, please.

A Yes. It was, resulted from me supposing had been a friend of some inmate that was in the jail by the name of Clifton Bailey or something. Somebody told me that I was a friend of his, and they told me that I should deliver a message to this dude.

Q That you should deliver a message to the dude?

[154] A Deliver a message to him.

Q To who?

A To this guy by the name of Clifton Bailey. He told me, they said, "since he's one of your buddies, you deliver him this message. You tell him that we are going to kill him and he's also going to receive some of the treatment that you just received for testifying in the Brad King case this summer."

Q Mr. Wilson, would you describe the incident that took place when this officer, Officer Webb beat you?

MR. SCHAARS: Your Honor, I must object again. We are not concerned whether this gentleman says he was beaten; whether or not Mr. Walker has a defense along those lines.

THE COURT: I think some leeway should be accorded the defendant, Mr. Schaars. However, having already brought out something of his own personal recollection now I would ask you to confine your questions to what he knows about your condition.

THE DEFENDANT WALKER: Your Honor, what I'm asking him is—

THE COURT: I understand what you're asking.

THE DEFENDANT WALKER: It is my position—

THE COURT: I would like you now to go into what happened to his knowledge concerning yourself.

BY THE DEFENDANT WALKER:

[155] Q Mr. Wilson, excuse me. Were there any other beatings that took place at the jail during the time that you were there in the Northeast One housing unit?

A Yes, more or less like that, a every day thing.

MR. SCHAARS: I'm sorry. I can't hear the witness.

THE DEPUTY CLERK: Pull the mike up.

THE WITNESS: I'm saying this is more or less like an every day thing that went on down there.

BY THE DEFENDANT WALKER:

Q All right.

Defense has no more questions.

THE COURT: Any other defense counsel wish to ask questions?

CROSS-EXAMINATION

BY MR. DRURY:

Q Sir, my name is John Drury and I am defense counsel for a gentleman who is on trial today by the name of Clifton Bailey.

Now, do you from your personal knowledge know Clifton Bailey?

A No.

Q I see. Have you ever met him before? Have you ever met anybody by the name of Bailey at the District of Columbia Jail or at Lorton?

A That is when I first met him over at the jail.

[156] Q I see. Do you know him by any name other than his name, Clifton Bailey?

A No.

Q Do you know a person by the name of Sonny?

A No, I can't remember. I know a few Sonnys, you know.

Q Mr. Bailey, would you stand up?



This is my client, Clifton Bailey. Have you ever met him before?

A I have seen him over at the jail. Personally, I have seen him. We had a confusion, you know. I personally don't know him.

Q Well, now your name is Bernard Eugene Wilson, is that correct?

A Right.

Q Mr. Walker-El referred to you as Mr. Blake. Could you please explain to the ladies and gentlemen of the jury why he referred to you as Blake?

A Well, like during my, you know, my prior history as a child, so forth I sorta like figured I was getting out of the Department of, you know—the place. In other words, I was trying to get out of the place and I gave them a false name, you know, thinking I could get out.

Q But you are known both as Mr. Blake and Mr. Wilson?

A Right.

[157] Q Do you mind if I refer to you as Mr. Wilson?

A It doesn't make any difference.

Q Now, as I understand from your testimony you are at Lorton, Virginia, is that correct?

A Yes.

Q Prior to being at Lorton you were at the D.C. Jail. Now, when was it that you were transferred to Lorton?

A I was transferred to Lorton—

Q Now, let me—Mr. Wilson, this is a microphone. The best way to give any testimony in this case is to lean forward and to speak very closely to that microphone so all of the ladies and gentlemen in the courtroom and of course the ladies and gentlemen in the jury box might hear you.

Now, when were you transferred to Lorton?

A I had been transferred to Lorton twice. Which are you referring to?

Q I am actually referring to your present commitment to Lorton.

A Just my present commitment, just when I got down to Lorton last month.

Q So that would be in February.

A February.

Q Where were you prior to that?

A Everywhere.

Q Well, were you at D.C. Jail?

[158] A Right.

Q Now, during the summer months, June, July, and August of last year were you at D.C. Jail?

A Yes.

Q When did you first see my client, Mr. Bailey who I have shown to you?

A The day I went down in dead lock there was an incident. Him and some other guy was having an incident in the hall.

Q Okay. Let me first of all ask you questions concerning the New D.C. Jail. Is that where you were?

A Right.

Q And the D.C. Jail is divided into sections. One of the sections being Northeast One?

A Right.

Q And that means that it is the—in the Northeast section on the first floor, is that correct?

A Right.

Q Is there a particular—Is the Northeast section of the first floor, is that what they call dead lock?

A Right.

Q And is dead lock a place where they put prisoners who have difficulty at the jail, who need protection or to perhaps—who perhaps want to be removed and separated from the normal population of the prison?

[159] A Right.

MR. SCHAARS: Objection. He is asking the witness to testify as to correctional policies.

THE COURT: Yes. I think he can probably tell you a good deal about that without a leading question, Mr. Drury.

BY MR. DRURY:

Q From your knowledge could you explain what dead lock is and speak very loud so the ladies and gentlemen of the jury can hear you.

A Dead lock is a segregated part of the jail for inmates who are under protective custody, for inmates who can't function in open population and inmates under threat of inmates within the jail.

Q Is an inmate—Strike that.

How many individuals are there in dead lock?

A Eighty.

Q Eighty?

A Yes.

Q Are they all on the ground floor or on one floor or are they on tiers, sir?

A They are tiers.

Q Now, are you ever let out of dead lock during the day time?

A No. No.

Q Could you tell me the manner in which you—Strike [160] that.

How many individuals are in each cell in dead lock?

A One.

Q Between each individual cells are there bars or are there walls in which you cannot talk through?

A There are walls.

Q Can you see the person next to you in the other cell?

A No.

Q Can you see the person across the hall in the other cell?

A Yes, sometimes. If he is directly across from you.

Q Now, I assume that there is a door?

A Right.

Q Is there anyway that you can look out of that door?

A Oh, yeah, you can look out the door. It is just bars on the front of the door.

Q Is it a completely barred door or is there only a little peep hole?

A There is a complete—In the Northeast One there is complete bars. The rest have, you know, doors.

Q You have explained to us what dead lock is like. How did you happen to see my client, Mr. Bailey, there?

A I seen him arguing with a dude who is a friend of mine. They had somewhat of a conflict. The dude was more or less like a personal friend of mine.

[161] Q By "the dude" you mean a friend of yours in jail?

A Yes.

Q With the exception of this time, how would you have an occasion to see someone like Mr. Walker-El or Mr. Bailey?

Would you ever meet in the hallway?

A No. No.

Q Are you allowed out of your cell?

A To take a shower. Sometimes they permitted you to make a phone call, or if you're going to medical or something like that.

Q Now, you have described that you, or you have related to the jury that you first saw Mr. Bailey and that you knew that he was in Northeast One, the dead lock section sometime in the summer of 1976, is that correct?

A Right.

Q And you have referred in your testimony to burnings. Who starts these fires?

A I don't know. I don't know.

Q My question is: Do the inmates start the fires or do the guards start the fires?

A It is actually hard to say. Like I can't tell what actually goes on outside of my cell.

Q You cannot see to the left and you cannot see to the right out of your cell, but you notice that there were fires occurring in the hallways or in other cells?

[162] A Well, you know inmates would set their own cells on fire, but they would set some outside of the tiers, you know.

Q What would the guards do?

A Nothing. Let it burn.

Q What would they use for fire, for kindling? Would they use cigarette packs or what, sir?

A Use things that was burnable.

Q Would there ever be any attempt to put out these fires by the guards?

A Oh, no. They go in the office. They have a little booth, so forth. They go in the office, shut the booth door.



Q I can't hear you, sir. I'm less than ten feet away from you and I can't hear you.

A Well, like when the fire starts, like they normally go inside of their booth and close the door.

Q Their booth?

A Yes, and then like they don't worry about what goes on outside.

Q With regard to an individual cell. Are there any windows in your cell?

A Umm.

Q What are the windows like? Are the long windows, length wise or are they little peep holes?

A Long windows, you know.

[163] Q I see. Now, are they barred?

A Yes.

Q Is there glass?

A Yes.

Q Can you open the window and get fresh air?

A Yes; take the glass out.

Q In the normal occurrence of events can you turn a knob on the window between the bars and get fresh air?

A No.

Q What would happen when these fires are started and the smoke would filter into your cell?

A I tore my window out.

Q Pardon me.

A I tore my window out.

Q You broke it out?

A Yeah.

Q Is there airconditioning in Northeast One?

A In the winter time.

Q Is it in the summer, sir?

A No.

Q You have referred to physical beatings that occurred. Now, there are fights between inmates, are there not?

A Umm, umm.

Q And are these the beatings that you are referring?

A Uh-huh.

[164] Q Speak up, sir. What are the beatings that you are referring to?

A I'm speaking about the beatings that the guards will do to inmates. I mean like the jail, I mean like I was—asked to transfer to any other institution, wherever the man has custody rather than that institution. I didn't want to stay up there for sure.

MR. SCHAARS: I object to this at this point. He is giving his reaction to this stuff rather than what Mr. Walker's defense purports to be.

MR. DRURY: I am merely trying to get a clear picture of the beatings and who the beatings are directed against. My next question is: Why the beatings are directed against them.

THE COURT: You may question the witness.

BY MR. DRURY:

Q The beatings are conducted by the guards, by one or two guards?

A Normally—

Q You will have to speak up.

A I would say there would be numerous. More than one. Sometimes like it would be maybe six or seven guards, you know.

Q Now, are the beatings inside an individual cell or outside of an individual cell?

A They come in your cell.

[165] Q Well, how would you know that these beatings were occurring? You can't see left, you can't see right. You can only hear out the window.

A All you have to do is hear.

Like the guy who slept next door to me, you know, there was evidence that they was practically killing him. He was hollering when they brought him out of the cell. He was bleeding half to death. Nobody else in the cell. He was by himself. All of the other inmates were locked up.

Q Thank you. My question—The next question that I have is: If the inmates are not allowed out of the cell what is going to cause, from your experience, a D.C. Jail guard to go into the cell and beat a man?

A I don't know what caused that. I don't know.

Q Were you ever beaten?

A Yeah.



Q Why?

A I don't know. They told me to deliver a message. Simply for that. The next thing I know they came down to my cell and tried to beat me half to death. I got all cut up so forth for nothing.

Q Let me ask you this: Have you ever heard of the Brad King case?

A That is part of what the guards was discussing with me.

[166] Q Slow down in your testimony. Speak to the ladies and gentlemen of the jury.

MR. SCHAARS: Your Honor, that is not responsive to the question. The question was: Had he heard and he answered that.

THE COURT: I sustain the objection.

BY MR. DRURY:

Q In what context have you heard of the Brad King case?

A From a guard.

Q Who was the guard?

A Officer Webb, same one that beat me.

Q You said Officer Webb?

A Right.

Q Could you tell us what the officer told you and when, sir?

First of all, when?

A This was—

MR. SCHAARS: Your Honor, that is hearsay.

THE COURT: Yes. Sustained.

MR. DRURY: Your Honor, I believe that at a later point in time that there will be some corroboration from my client concerning that. I believe in order to shorten the defense presentation in this case it is necessary for me to not bring back Mr. Wilson at a later time, but to elicit this [167] testimony now.

THE COURT: Hearsay is hearsay. It is not evidence.

MR. DRURY: Thank you, Your Honor.

BY MR. DRURY:

Q Did you testify in the Brad King case?

A No.

Q Did you ever know a person, personally, Brad King?

A No, I did not.

Q Did you know if anyone testified in the Brad King case?

A Yes. They told me that this dude did.

Q Did you know whether someone testified in the Brad King case?

A Yeah.

Q Was that person an inmate in Northeast One?

A Yes.

Q Was there ever any—strike that.

Is there a medical facility down at the new D.C. Jail?

A Yes.

Q Do doctors and nurses staff that medical facility?

A Yes.

Q Have you ever gone to that medical facility?

A Yes.

Q Have you ever been treated for any type of an illness or a cut or any type of disease?

A Yes. I was treated for a cut.

Q Have you ever gone there for any type of smoke inhalation which would mean being overcome by smoke?

A No.

Q Have you ever been present when anyone has, a prisoner has been brought into the jail who has been subject to breathing too much smoke or inhaling too much smoke?

A Yes.

Q Have you ever seen any prisoners in Northeast One being taken out by the guards as a result of inhaling too much smoke?

A Yes.

Q Would the people who had been overcome by smoke have been ill as a result of the fires that were started?

MR. SCHAARS: Objection, Your Honor.

THE COURT: He can state what he has observed concerning those people.

BY MR. DRURY:

Q After the fires have been put out, either burned themselves out, an inmate has placed them out, what action has been taken by the authorities with regard to inmates who have been sickened by too much smoke?

A What action would be taken?

Q Yes.

[169] A I have never seen no action taken.

Q I can't hear you. But you have seen people taken to the medical facility for smoke inhalation?

A I don't know where they was taken. I know they was taken—I know they was taken out of the unit.

Q I see.

MR. DRURY: Court's indulgence for one moment. I have no further questions.

\* \* \*

THE COURT: Mr. Robbins.

### CROSS-EXAMINATION

BY MR. ROBBINS:

Q Mr. Wilson, my name is Robert Robbins. I am representing Mr. Ronald Cooley today. Do you know Mr. Cooley?

A Yes.

Q During the summer of 1976 when you were in Northeast One in the Jail were you acquainted with Mr. Cooley?

A We weren't acquainted. I had known him.

Q Was he in that same housing unit at that time?

A Yes.

\* \* \*

[170] Q Did you ever see him during the summer of 1976 with any physical injuries

A Umm.

Q Could you describe those, please?

A I have seen them take him—

Q Could you please speak up?

A It wasn't a physical injury. What it was, was they taking him out of the block. He was vomiting some kind of black stuff. I don't know what it was. I don't know what happened to him. When he was around there one time they took him out. He must have had an argument with one of the guards. They took him out up to the clinic. I don't know what actually happened or caused it.

Q Can you specifically remember when this was?

A This was in the month of—I can't be—you know, approximately. My day can't be processed up to the

exact date, but it would have to be within July or late part of July or early part of August.

Q Are there any other incidents that you remember with regard to Mr. Cooley?

A Involving this case?

Q Similar incidents to what you just described or [171] any other physical injuries.

A I recollect—discussed all the things that happened. Like at the jail, if it doesn't have anything to do with this case—

Q I am only concerned about Mr. Cooley.

A You mean have I ever seen anything happen to him? Those are the only two things I ever seen happen to him, the few times they would let him out to take a shower then one of the guards would be intimidating him or something like that, pushing him down to the shower, telling him to take a shower with the handcuffs and shackles. I remember things like that.

Q Now, earlier you said that he was taken out of his cell and he was vomiting.

A Yes.

Q Do you know why he was taken or where he was taken?

A No. I don't know where he was taken. I actually—I don't know what goes on. I was outside of Northeast One after they take him out of there.

Q Do you know what occurred before that?

A Yes. They was burning up a whole lot of sheets, so forth around the back hall.

Q Who was?

A I don't know. I don't recall the names.

Q And, after that you saw Mr. Cooley being taken out [172] of the cell?

A Right.

Q Now, Mr. Wilson, you said earlier that you had been taken to the hospital at one point for a cut.

A Yes.

Q Why were you taken to the hospital?

A Because Officer Webb, you know, I was in my room sleeping and he came in there and just—I don't know, just went off.

Q Who did this?

A Officer by the name of Webb.



Q A moment's indulgence, Your Honor.

THE COURT: All right.

MR. ROBBINS: No further questions, Your Honor.

THE COURT: Mr. Schaars.

# CROSS-EXAMINATION

BY MR. SCHAARS:

\* \* \*

[176] Q You have testified that your cell was around the corner from Mr. Cooley's, is that correct?

A Right.

Q Did you ever hear any beatings from Mr. Cooley?

A Hear them?

Q Well, you have testified that you could hear a beating but you couldn't—

A I couldn't see it. I could hear it just about everything going on.

Q How many cells are between yours and Mr. Cooleys?

A It wasn't actually cells. I'd say, if you was counting cells, I say maybe he'd be eight cells over.

Q Yet you are positive when you heard something it was Mr. Cooley's cell, not any of the other eight?

A Let me tell you something about institution life. If you lived just there and you're around them you know them when you hear them.

Q Now, could you answer the question? Did you know that it was Mr. Cooley as opposed to any other gentleman?

A Yes.

Q Did you ever hear the other gentlemen being beaten in those other eight cells?

A Yes, and know who it was.

Q You had—You knew absolutely who it was each time?

A Right.

[177] Q No question?

A If I wasn't sure it was somebody, any one man saying they jumping on so and so, and so and so. It was as simple as that.

Q Now, when Mr. Cooley was taken out after these sheets were burned where were the sheets being burned?

A I assume out the back hall.

Q How far was that from your cell?

A I'd say about eight cells.

Q Eight cells over?

A Right.

Q Eight cells towards Mr. Cooley or away from Mr. Colley from your cell?

A That would be eight cells—If I counted eight cells, evidently must have been two cells away from him.

Q From Mr. Cooley?

A Right.

Q And they were sheets and stuff?

A Yes.

Q How do you know they were sheets?

A You could tell the way paper burns, sheets burn and continue to burn.

\* \* \*

# [180] REDIRECT EXAMINATION

BY THE DEFENDANT WALKER:

Q Mr. Wilson, was I, myself, an inmate of Northeast One houseing [sic] unit while you were housed there?

A I believe so.

Q Another question I'd like to ask you is: During the time of the burnings, were any inmates at any time, to your knowledge, allowed to or let out of their cells to escape the burnings or smoke inhalation?

A No.

Q Have you ever heard me, personally complain to any officials concerning smoke inhalation or the need for medical attention?

A Yes.

[181] Q What did you hear, if anything, concerning my complaints, Mr. Wilson?

MR. SCHAARS: Objection as to hearsay.

THE COURT: Well, the defendant said which is over heard by the witness is admissible.

BY THE DEFENDANT WALKER:

Q Would you answer the question, Mr. Wilson. Would you answer the question, Mr. Wilson?

A I heard you say that if they didn't straighten out some of the rules or the jails you were going to file a



writ pertaining to jails, towards the—with respect toward the inmates there.

Q Do you know of any writs of this nature were ever filed?

A I don't know.

Q All right. Where was your cell located in the Northeast One housing unit, Mr. Wilson?

A I was in Cell 37.

Q Cell 37?

A Yes.

Q Is that on the top tier or bottom tier?

A That is the bottom tier.

Q Where was my cell located, if you remember?

A If I remember you must have been over top of me.

Q Umm. Where was my cell in relation to yours?

[182] A I would say you had to be exactly over top of me. If not exactly over top of me you had to be maybe down some, I can't positively remember.

Q From where you were located in reference to where I was located were you able to clearly hear conversations that were going on between myself and anybody that may have been standing in front of my cell or near my cell?

A No, I couldn't hear.

Q All right. The District Attorney asked you were you able to know who would be in—who was being beaten by hearing the voice. I'd like to ask you: Is that just your assumed opinion or could you be absolutely sure by voice alone who was being beaten?

A Yes. If there was a fellow inmate, inmates that I more or less had any dealings with, yeah.

Q Let me ask you this: What other way did you have of determining who was being beaten other than by voice recognition?

A Somebody would just say it.

Q Somebody would just say it?

A Yes. Like if Joe was getting beat, Frank would say: "They're beating Joe."

THE DEFENDANT WALKER: That is all, Mr. Wilson. Thank you.

\* \* \*

[184] BY MR. DRURY:

Q Are there any type of fire-fighting equipment within Northeast One that—

A I guess so.

Q There are?

A Yes, there is some down there.

Q Where are they located, sir?

A Within the officer's booth.

Q They are located in the officer's booth?

A Yes.

Q Now, you were an inmate, were you ever allowed to go in the officer's booth without authorization?

A No.

Q Were you ever let out of your cell to go get a fire-fighting piece of equipment?

A No.

Q Is there any fire-fighting equipment in your cell?

A No.

Q Is there any water in your cell?

A Yes.

Q They have lavatory facilities, is that correct?

[185] A Right.

Q When a fire occurred were any inmates allowed in your experience out of their cells to fight these fires?

A No.

Q Are inmates allowed to have matches?

A Yes.

Q In Northeast One are they allowed to have matches?

A Yes, they are allowed. No, not no more since I was just down there two weeks ago they took all of our matches so evidently they can't keep matches.

Q On August 26th, the day or the night of the escape, were you at D. C. Jail?

A I don't know when the escape took place. I was down in Lorton Youth Center.

Q I see. Thank you.

When a beating occurs is there any information that you receive from other inmates or from the guards?

A Yes.

Q That indicates that a beating is taking place or did occur last night or at some time prior?

A Yes. Like most of the inmates will boo, say "Why don't you let two or three of us out and two or three of us would fight you all." I mean a man on man thing instead of three men taking one man. It would be something like that.

\* \* \* \*

[188] MR. SCHAARS: Your Honor, if I may at this time I would ask the Court to require the defendants that they make a proffer as to how they intend to satisfy what at least appears from the Government's point of view to be fairly clear aspect on all the law on duress and necessity that is when one escapes under duress or because of necessity one turns himself in immediately. That does not appear evident in this case in any way, shape or form, and I would respectfully suggest to the Court to pursue this kind of line of defense witnesses only to perhaps revolve in the end in the striking of testimony or eliminating that testimony by way of instruction, because the defense could not establish the last element of duress, is to really waste the time of the Court.

I would suggest that a proffer would be appropriate.

THE COURT: Is Counsel prepared to make a proffer?

MR. DRURY: Your Honor, I speak for my client, Clifton Bailey. I believe that Clifton Bailey's defense is premised on the fact that he was subjected—Court's indulgence. He was subjected to harassment and beatings by jail officials. He made an attempt prior to the escape according to my study of his testimony and my confirmation according to the study of his statements to me and my confirmation of certain aspects of it, I believe that prior to the escape he came back [189] here prepared to testify in the Brad King case. The Brad King case was a case that occurred before Judge Bacon in the Superior Court. He gave testimony and King was ultimately acquitted. He came back to the jail. This was in June or early July. He was not shipped back to the appropriate Federal Institution where he should have been. He was subject to harassment and beatings by the guard officials. As a result of these beatings he filed a suit in Superior Court, which I have been able to cor-

roborate with a certified copy of the complaint and the existence of that suit will be offered as evidence tomorrow.

He has in his possession subpoenas that have been sent out. An answer by Mr. Risher's office that was sent to him on March 2nd of 1977. However, the institution of the suit occurred prior to the escape and it is our contention that this suit is corroborative of attempts to bring to justice the harassment that occurred, the beatings that occurred and I would respectfully oppose any inclusion into the requirements of duress being offered as a defense of this aspect that there must be some reporting to Governmental officials after the man escapes.

I have read the Chapman case very carefully. The Chapman case, as the Court is aware, which was offered by Mr. Schaars earlier today, dealt with an escape from prison and what happened the defendant's testimony concerns his [190] defense, basically, was that he was forced by the other prisoners to leave the custody of the jail, and he went along for the ride so to speak and once outside the confines of the jail and once outside of the "custody" of the other prisoners he decided he made a voluntary decision to leave and he did not go back. That case, very clearly, points out that—and it is a Fifth Circuit case, that there should have been some reporting or attempt to contact the police.

In this case, Your Honor, however we have an issue that is separate from Chapman. We have the case where a man was subjected at least as I believe the evidence will show, subjected to beatings. He made an attempt to rectify those beating through the legal system that we have here in the District of Columbia, was not successful immediately and was subjected to more beatings. Then when the opportunity arose he availed himself of it. He left. He did not go back. He did not go back because of his knowledge, Your Honor, that there was only one institution that you go back to in the District of Columbia. This Clifford Bailey has been in jail since 1972. He has, according to his statement to me, on Monday evening, he has been in dead lock more than three-quarters of the time that he's been in jail since 1972.



Now this neither confirms or disapproves what the Court may feel, and what the prosecutor may feel about Mr. Clifford Bailey's desire for peace and good order. Perhaps [191] he is rowdy when he's in jail, Your Honor, but the issue is that he's been in dead lock. He realized when he got outside of the District of Columbia Jail, after escaping that the only place he was going to go, the only dead lock area in the New D. C. Jail was Northeast One. He would go right back to the area of his captors, to that extent I believe it is distinguishable from Chapman. I believe that any inclusion, Your Honor—

THE COURT: Well, Court processes do not limit the Plaintiff to return to the same institution where he may have been confined. I have many times had the experience of directing that an individual be confined at some other jail.

MR. DRURY: That is correct.

THE COURT: So, I don't know what type of suit he filed or whether the prayers for relief were monetary in character or whether they sought injunctive relief. I haven't seen the suit, but at this time I will not preclude the presentation of evidentiary material, but I warn you this is one of the elements: Turn oneself in or the equivalent at least, notify the authorities where you are and seek relief by seeking the opportunity of being confined at some other institution. That is something you can think about.

MR. DRURY: Your Honor, I would point out at this time, at least for Clifford Bailey, that I have not been informed of any evidence of that nature.

[192] THE COURT: All right.

Let's proceed. Bring in the jury.

\* \* \*

[194] LESTER DELANE ROBINSON

was called as a witness by and on behalf of the defendant, Ralph Walker, and after having been duly sworn was examined and testified as follows:

## DIRECT EXAMINATION

### BY THE DEFENDANT WALKER:

Q Mr. Robinson, would you state your full name, please?

A Lester Delane Robinson, Assistant Administrator of Operations, Lieutenant, Second Duty.

Q Where are you presently employed?

A New Detention Center.

Q What is your official capacity or function at the Detention Facility?

[195] A Assistant Administrator for Operations.

Q Would you give us a brief summary of what your functions entail?

A My functions entail the overall day to day activity of the D. C. Jail as far as security and housing, recreation, meals are concerned.

Q The overall, what?

A Function and operation of the D. C. Jail, D. C. Detention Center in areas of security, housing, clothing, feeding is concerned.

Q Thank you. Do you have any immediate staff working under your direct supervision?

A Major William Long is my immediate subordinate, and all of the correctional staff.

Q Approximately how many persons do you feel comes under your direct supervision?

A About 360.

\* \* \*

[203] Did you on any occasion between July 11th and August 26th receive orally, or otherwise any records of any burnings in the Northeast One housing unit?

A Yes, I did, Mr. Walker.

Q All right. Did you on any occasion between July 11, and August 26th receive orally or otherwise any reports of any physical beatings in the Northeast One housing unit by official personnel?

A No, I didn't, Mr. Walker.

Q Umm. Did you on any occasion between July 11th and August 26th received orally or otherwise any reports



of any physical restraints on inmates by correctional officials?

[204] A Oh, yes, I did.

Q How many, or how frequently were these reports received by you if you can answer that as far as the burnings are concerned?

A Well, all of the burnings were put in memo form and that should be a matter for the record.

The restraints used on residents were mostly put in memo form and should be a matter of record.

I can't give you an answer as to the exact number.

\* \* \*

[206] THE COURT: Were you aware of the fact or the allegation that when there were fires the officers left and allowed the fires to burn themselves out?

THE WITNESS: No, sir.

THE COURT: All right.

BY THE DEFENDANT WALKER:

Q Were you aware of the—were you aware of the magnitude or of how terminal the situation in Northeast One had become as a result of the fires, how terminal?

A Mr. Walker, I was aware of some problems in Northeast One due to inmates setting fires.

Q But you weren't aware—

A If that answers your question.

Q That doesn't answer my question.

Were you aware of how terminal the situation there had become?

THE COURT: That is argumentative. He can state the degree of his awareness.

[207] THE DEFENDANT WALKER: All righty.

BY THE DEFENDANT WALKER:

Q Did you receive any written reports or petitions from the inmates of Northeast One complaining about the terminal situation that existed in Northeast One?

A I received a petition, I think, from the inmates in Northeast One.

Q All right.

A But I also received some petitions from other inmates in other housing that pertains to other matters.

Q That is not the question.

A Okay.

Q The question: Did you receive petitions from inmates in Northeast One complaining about the conditions that existed there concerning the fires?

A I would think that I had received petitions. Let me put it this way: I can't state for certain that I received one. I think I did.

Q Okay. Thank you. Now, what did you personally do, if anything to bringing an end to the beatings and burnings and smoke inhalations being suffered almost daily?

MR. SCHAARS: Your Honor—

THE COURT: You may rephrase that. Take up one subject at a time.

BY THE DEFENDANT WALKER:

[208] Q What did you do, personally, if anything toward bringing an end to the beatings that you had received reports of?

A I didn't get—

MR. SCHAARS: Your Honor—

THE WITNESS: —petitions stating that anyone had been beat, Mr. Walker.

BY THE DEFENDANT WALKER:

Q And the same question in reference to the burnings.

A I didn't get a petition stating they had been burned. I got a memorandum from my supervisor stating that residents had set fires in Northeast One.

Q Did you, personally, do anything concerning the conditions there?

A Yes. I referred it to Major Long.

Q You referred me to Major Long?

A I referred the petitions—the memorandum back to Major Long,—

Q So, in other words—

A —for corrective action.

Q So if I was to find out what type of corrective action was actually taken I would have to question Major Long?

A Not necessarily. As far as the fires are concerned I also put the fires out and cleaned the place up.

[209] Q The officers did put the fires out?

A Yes.

Q Was that something that you received in a report?

A Yes.

Q From the officers.

Did you check into it to see the validity, the authenticity of the reports as far as the officers putting the fires out?

A Yes, sir, to my satisfaction I am certain the officers put the fires out.

Q That will be all, Mr. Robinson, thank you.

\* \* \* \* \*

[CROSS EXAMINATION]

[BY MR. DRURY]:

[225] Q Were you aware of any complaints that my client, Clifford Bailey, made against any specific officers on Northeast One during June, July and August?

A In reference to what, sir?

Q In reference to beatings.

A No, sir, I am not aware of any complaint Mr. Bailey made in reference to a beating.

Q Are you aware of any complaint that Clifford Bailey has ever made?

A Mr. Bailey has made a lot of complaints.

Q In fact he's complained so much that he's filed a suit in Superior Court, hasn't he?

A We could never—

Q Answer my question.

A I don't know about the civil suit he's filed.

Q You are not aware of any suit?

A I am not aware of it.

[226] Q Are you aware of an Officer Graves?

A We have two Officer Graves, yes, sir.

Q Are you aware of an Officer Graves that works on Northeast One?

A We don't have an Officer Graves, I don't believe that works at Northeast One at this time.

Q June, July or August, are you aware of an Officer Graves that worked in Northeast One?

A We have 360 officers. I don't know where all of the officers work on all three shifts. I'm not denying that he did work there when I wasn't aware of it.

Q Did you ever have an Officer Graves that worked in Northeast One?

MR. SCHAARS: Objection, Your Honor. He has answered the question three times.

THE COURT: Yes. Sustained.

BY MR. DRURY:

Q Have you ever been served with a subpoena in a case now pending in Superior Court by any U.S. Marshal?

MR. SCHAARS: Objection, Your Honor.

THE COURT: Too broad.

BY MR. DRURY:

Q Have you ever been served with a United States—strike that.

Have you ever been served with a subpoena by a U.S. Marshal in the case of Clifford Bailey v. The District of Columbia?

A I don't know, sir.

Q You don't know?

A I don't know.

Q Well, would you personally receive a subpoena at your office if one was served upon jail officials?

A Let me explain it this way:

I have been served with a number of subpoenas for a number of years for different reasons, and in my position I get served with a subpoena quite frequently.

THE DEPUTY CLERK: Defendant Bailey No. 4 marked for identification.

(Whereupon, Defendant Bailey's Exhibit No. 4 was marked for identification.)



THE COURT: This will not be regarded as legal service, Mr. Drury, if that is what you are seeking to do.

MR. DRURY: Thank you, Your Honor.

BY MR. DRURY:

Q I'm going to show you what has been marked as Defendant's Exhibit No. 4 for identification and ask you whether you know what that document is, whether you can identify it, sir.

A This is a marshal receipt for return of service.

[228] Q Who is the service to have been directed upon, sir?

A Mr. Robinson.

Q Lester Robinson.

Is there a name on the bottom of that, sir?

A Where, on the bottom, sir?

Q Is there a signature in writing?

A There is a Marshal's signature.

Q Can you read it, sir?

A No, sir, I can't.

Q And is there a notation that has been made on that document that personal service has been made on you?

A I see it is personal service.

Q It says: "p-e-r-s- period, service," doesn't it?

A Yes.

\* \* \*

[230] BY MR. DRURY:

Q Now, do you have any familiarity with the complaints by my client concerning an attack that was made by an Officer Graves on him during June, July or August?

A 1976?

Q 1976, yes, sir.

A Maybe, yes.

Q Who brought it to your attention?

A I think it was brought to my attention by the administrative assistant to the superintendent.

Q Who would that be?

A That was Mr. Viss. That was about two months ago. The complaint was not made in June, July or August of 1976. It was made a couple of months ago to my knowledge.

\* \* \*

[235] Q Mr. Walker-El asked you about fires that occurred in the Northeast One sector. Who caused these fires, sir?

[236] A The residents set the fires.

Q What material was used to set these fires?

A Sheets, pillow cases. In some cases mattresses, personal items of institution clothing, shirts, underwear, blue denim.

Q Would these fires be confined to a particular cell or would the items of burning material be thrown out into the hallway?

A They would be thrown out into the block and hallway. No one wants to keep the fire in the cell.

Q What is the procedure that you or the Department of Corrections has laid down for the putting out of these fires? Who is to do it, the inmates or the officers?

A No, sir. That is why some of them set fires to get out of the cell. We have officers put out the fires. We turn the smoke exhaust fans on. We take anybody to the hospital that the MTA, which is a medical technician who comes down to examine them to see if they need to go to the hospital, quite frequently.

\* \* \*

[239] Q Are you personally aware from any source of information that comes into your possession that Clifford Bailey was the subject of threats by guards under your supervision or in the District of Columbia Jail complex?

A No, sir.

Q Has Mr. Bailey ever complained to you about these threats?

A Yes, sir.

Q So that you are aware?

A I am aware that inmate complained.

Q On more than one occasion?

A Yes.

Q To more than one individual?

A To me and most to the Adjustment Committee.

Q Prior to his escape?

A I don't know whether it was prior or after. I don't know.



Q When did he go before the Adjustment Committee after his arrest on November 19, 1976?

[240] A I can't tell you the date, but Mr. Bailey—

Q Was he before the Adjustment Committee subsequent to November 19, 1976?

A Oh, yes, on a number of times. As a matter of fact I think I saw Mr. Bailey two, three weeks ago.

Q How many times has he complained to you, sir?

A It depends. He complains about different things. Sometimes wants you to call Glendale Hospital. Sometimes he wants to call one of the hospitals or St. Elizabeths or some place.

Q My question to you really was, sir: How many times has he been before the Adjustment Board?

A I can't tell you how many times he's been before the Board.

Q How many times have you, personally known that he has complained to you about threats to do bodily harm to him by jail officials?

A I don't know.

Q More than once, though?

A Oh, yes.

Q Quite possibly before his escape, is that correct?

A Quite possibly correct.

Q Of course that would be contained in the documents that you keep?

MR. SCHAARS: I must object. The documents have [241] been subpoenaed. This gentleman has indicated again and again he's not intimately familiar with the documents. If the defense wants the documents they are being subpoenaed. They can cross-examine the witness from them. This is just belaboring—

THE COURT: Sustained.

BY MR. DRURY:

Q Have you ever made out any form or put your name to any form acknowledging existence that shows that my client complained to you about threats?

A Mr. Bailey comes up before the Adjustment Committee.

Q My question is very simple.

MR. SCHAARS: May the witness be permitted to answer the question.

THE COURT: Usually we follow that rule even in cases you prosecuted before this court, Mr. Drury.

MR. DRURY: I'm sorry.

THE WITNESS: The results of the action at the Adjustment Board is kept by recorder.

BY MR. DRURY:

Q On tape?

A On a tape, by an officer who does the recording.

Q You keep a series of notes for every adjustment hearing?

A Yes.

[242] Q I'm sorry. You do or—

A The recorder keeps them.

Q And these notes would be in the possession of the D.C. Jail officials and the tapes would be also?

A We don't have any tapes.

Q Transcript like this lady is—

A No, we don't have that. We don't have that much money. We keep notes. We make a summary from the notes.

Q In his complaints to you prior to the escape, did he accuse any officer of, any specific officer of making threats to him?

A He might have. I don't remember.

Q You do not recall whether an officer under your supervision threatened to do bodily harm to my man?

MR. SCHAARS: That is exactly what Mr. Robinson just said.

THE COURT: We are going to get these reports.

MR. DRURY: Thank you.

BY MR. DRURY:

Q Sir, do you consider as a supervisor that such a complaint of a threat directed against an inmate by a guard is a matter of such significance that it deserves investigation?

A That is true, sir.

Q And at your direction was any investigation ever [243] made of these threats directed against my client?

MR. SCHAARS: Objection, Your Honor. The alleged threats. Mr. Drury is drawing conclusions again and again. He is arguing stuff that isn't in evidence.

THE COURT: That is correct. Objection sustained.  
MR. DRURY: I will rephrase the question.

BY MR. DRURY:

Q Was any investigation directed to determine the validity of these threats, alleged threats?

A Every allegation Mr. Bailey has ever made has been investigated, has been filed, we felt without foundation, totally without foundation.

Q Of course every investigation that is conducted—

A Yes.

Q —is memorialized on paper, is that correct?

A I didn't say that, no.

Q Are the investigations that concerned the threats made against—the alleged threats made against my client put in memorandum form?

A Some are, some aren't. Some are so frivolous we don't bother to put in memorandum form.

MR. DRURY: Court's indulgence, please.

THE COURT: Yes.

MR. DRURY: Your Honor, with the Court's permission may I suspend my questioning of Mr. Robinson until I have— [244] I am in receipt of the records?

THE COURT: The Court has been suggesting that to you for the last half hour, Mr. Drury. I'm glad you got the word.

MR. ARMSTRONG: Would the Court allow me to talk to Mr. Drury and Mr. Schaars for a moment?

THE COURT: Yes.

MR. ARMSTRONG: Thank you, Your Honor.

Mr. Walker, why don't you join us.

THE COURT: All right, Mr. Robbins.

### CROSS-EXAMINATION

BY MR. ROBBINS:

Q Mr. Robinson, correct be if I'm wrong, but your testimony was that a man could be on Northeast One,

maximum security because he was considered incorrigible and that he would be considered incorrigible if a complaint was filed by the shift supervisor. Is that not correct?

A No, I didn't say a complaint. I said a shift supervisor would—could place the man on dead lock status and an incidental report which would then go to the Adjustment Board—

Q But—

A —for clarification.

Q —he would first be placed on dead lock before he appears at the Adjustment Board?

[245] A That is true.

Q And thereafter he, as long as he was on dead lock he would go before that Adjustment Board every fourteen days?

A Every fourteen days, yes.

Q Now, during the summer months of 1976 do you know where Mr. Cooley was housed?

A I believe Mr. Cooley was in Northeast One.

Q So during the summer months he would have come before the Adjustment Board every fourteen days?

A He would be summonsed before the Adjustment Board every fourteen days. Some people refuse to come. We don't force them.

Q Do you personally remember seeing him during those summer months?

A I have seen Mr. Cooley before, yes.

Q During those visits to the Adjustment Board would he ever make any complaints about his treatment in the jail?

A I don't believe Mr. Cooley ever complained to me about anything except getting off of dead lock.

Q How long would these visits to the Board last?

A Well, we are talking about whatever he had on his mind, his complaints were. Some of them—Depending on the person were up to ten to twenty minutes.

Q Do you recall how long an average visit with Mr. Cooley would last?

[246] A No. They were pretty short. As I say, Mr. Cooley, he really didn't have anything to complain about, didn't make any complaints to me.



Q All of the times he was before you he never made a complaint about physical abuse?

A No. He just wanted to know when he was going to get off dead lock.

Q Did you ever notice any physical injuries on Mr. Cooley?

A None.

Q Not during the entire summer.

A Not during the entire summer.

Q If he did make any complaints would there be a record of that?

A If he made any complaints then there may be in the records of the minutes of the Adjustment Board proceedings.

\* \* \*

#### [248] CROSS-EXAMINATION

BY MR. SCHAARS:

Q Good afternoon, Mr. Robinson.

\* \* \*

[252] Q Can you estimate the number of petitions from inmates that you have received in the last three months, let's say?

A Well, are we talking about petitions now or subpoenas?

Q Petitions, just signed petitions from the inmates.

A Well, we really haven't received many petitions. We have received some. Petitions sometimes asking for [253] certain items that are not sold in the canteen. If we get enough people asking for them maybe we will order a dozen Kools, we will ask the Canteen manager if they have them. That is one type of petition. The other petition will be to ask if they would be allowed to watch t.v. after 11:30. Sometimes we get petitions that will complain about, maybe the lack of certain items on the menu, pancakes for instance, which we used to serve in the old days. We don't serve in this jail, we just don't do it. So, those are the type of petitions that I'm talking about.

Q Do you ever comply with the request of the inmates who give you petitions? Do you ever attempt to satisfy the petition they are seeking?

A If it doesn't involve security and can be handled we do it.

\* \* \*

[254] Q Now, Mr. Drury repeatedly characterized the guards and the correctional officers within your institution as having attacked inmates. Have you ever, as a result of your investigation of any inmate complaint—let me rephrase that.

With any complaint from any of these three gentlemen, Mr. Cooley, Mr. Bailey, Mr. Walker-El, determined that a [255] guard attacked one of these gentlemen?

A No, sir. There has never been any proven fact, any instance where this could have happened, where an officer attacked one of these gentlemen here.

Q Now, if one of these gentlemen indicated that he had been attacked what if anything would you do to determine whether or not that allegation or charge had some substance to it?

A Well, what we do is we call in the shift supervisor and given an assessment of what we have and ask him to make his own investigation first and take whatever action is appropriate. We try to be fair about this. I know we are fair, but we have not found any instance where either one of these young men were attacked by any one. It has been the other way around in most cases.

Q In fact in all cases that you have determined it has been them attacking guards or other inmates?

A That is true.

Q Isn't it in fact that in the case of one of the defendants he broke the jaw of another inmate?

A I think, yes.

\* \* \*



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Cr. No. 76-735-4

UNITED STATES OF AMERICA

v.

CLIFFORD BAILEY, DEFENDANT  
RONALD COOLEY, DEFENDANT  
RALPH WALKER, DEFENDANT

Washington, D.C.  
March 10, 1977

The above-entitled matter came on for further trial in open court at 9:45 o'clock, A.M., before:

THE HONORABLE OLIVER GASCH  
United States District Judge, and a Jury.

\* \* \* \*

[269] [MR. SCHAARS:] The second thing I would like to raise this morning is to renew my request for a proffer from these gentlemen as to what they intend to do with regard to the last element in the defense of duress. That is, the turning of themselves in. Mr. Bailey has indicated through counsel that he did not do that. He did not turn himself in. We have yet to hear from [270] Mr. Walker whether he turned himself in or whether Mr. Cooley as to whether he turned himself in.

I suggest to the Court that given time this trial is taking to try that a proffer might be appropriate, otherwise I would suggest we are simply wasting the Court's and the jury's time in going through all of this evidence.

THE COURT: What about the issue just raised by Government counsel?

MR. DRURY: Your Honor, yesterday afternoon I had the opportunity to spend some time in the library to research on the cases that the Court noted in the Government memorandum of law submitted by Mr. Schaars on the opening day of trial.

I read the Joiner case, the Woodring case, the Coggin case, and the Miller case, Your Honor. I believe that each case is distinguishable on its facts from the case that we have here, and—

THE COURT: Do you recognize there is an obligation of a defendant who seeks to utilize this defense to turn himself in or make his presence known to the authorities.

MR. DRURY: Your Honor, I do not believe that element that the Court and that the Government have called attention to is a necessary element.

THE COURT: Do you have any authority to support your position?

MR. DRURY: Your Honor, I believe that the Woodring [271] case, if I might merely explain what I—the jist [*sic*] of my argument. The Woodring case involved a defendant who was on a two-day furlough. He was let out to attend some divorce proceedings, and he was arrested for a traffic offense sometime later, and he is—his defense was, and it was uncontradicted, that he had an epileptic fit which was caused by the shock of the divorce proceedings, and this triggered the seizure, the epileptic seizure. It left him confused and affected his memory. However, the Court pointed out that there was an obligation on the part of the defendant to turn himself in and pointed out that certain, that the defendant was capable of remembering certain incidents that occurred during his fugitivity, and he was able to respond clearly to questions that were directed by the officer at the time of the arrest.

I would also point out that at that time he had in his possession a false driver's license and registration and the Court felt that since this man was on a furlough, and that since he claimed an epileptic seizure, which can be properly termed an involuntary incident that caused his failure to return to the institution, I believe that the issue of failure to report—the Court recognized as something necessary to this particular fact situation. Now, as the Court is well aware in this situation as I argued yesterday afternoon, after lunch, we have here a man who left the jail because he could not rely on his captors or the guards to adequately [272] respond to his com-

plaint that had been made. Now, turning to the Woodring case. The Woodring case concerned an escapee from an honor farm, a federal honor farm, and the facts in that case are highly amusing to read. In the defendant's testimony is that he was watching the movie one evening at the honor farm when he was tapped by, on his shoulder by someone.

THE COURT: I recall the facts.

MR. DRURY: And the stranger took him away from the jail and pointed a gun at him, that he was forced to remove himself from the jail. He was gone for 19 months, Your Honor, and the Court termed it a voluntary abduction. Now, there the Court said that they felt the man should have made an attempt to contact the prison authorities and turn himself in in the sense that he was voluntarily abducted. In the Miller case, it was actually a bail jumping case where a man was let out on bail and failed to show up for trial and the reason was given that he feared bodily harm. The judge said that—the judge at the trial level said that even if it were true, there would be no defense at law. I quote, "Especially since the defendant failed to tender himself to the authorities or otherwise ask that any protective measures be taken for his safety prior to fleeing the jurisdiction," here we have a man who is outside of the criminal justice system with the one tentacle that he's on bail. He fails to return to trial. He states as his [273] defense that he's threatened by someone on the outside if he did return he would be subjected to bodily harm.

There, the Court's reasoning was that he had an obligation to at least alert the police, that these threats were occurring.

The Coggins case, which incidentally concerns a fugitivity in Virginia of a D.C. resident who was incarcerated at Lorton, concerned a one-day furlough and the defendant contends that he did not return from the furlough, however that he called and there is evidence in the record of that case that he called the District of Columbia and was personally instructed on the phone to return to Lorton. He failed to return, Your Honor, and the Court said that clearly, the willfulness of the action

when he did not return, when he did not turn himself in, was an indication that indeed the defense was not substantive.

Here, Your Honor, we have an entirely different case. I would assert and submit that the Courts of Appeals in the Fourth Circuit and Tenth Circuit and Ninth Circuit have added this extra element to the facts of the case. It is not a necessary element to be included in these facts. Duress is a proper defense. Judge Bazelon, makes no mention of this extra element that the Government has asserted should be included in here. Judge Bazelon does not refer to that. I would submit, Your Honor, that it is not an appropriate—

THE COURT: I don't think that was before Judge [274] Bazelon. You're talking about Judge Smith's case.

MR. DRURY: Your Honor, yes, I am sorry, but I believe that—

THE COURT: There were no findings and conclusions in that that is the reason it was referred back to Judge Smith. When the findings and conclusions were made the conviction was affirmed.

MR. DRURY: Yes, Your Honor. I believe that the case, the ruling of Snow is dicta. I will concede to the Court, but I believe it is such that can be interpreted.

THE COURT: It is the position of the Court that when the defense of duress is asserted and when one escapes from custody, one has the obligation of making his presence known or turning himself in. These men did neither according to what I have heard so far. Now, I haven't heard all of the evidence—

THE DEFENDANT WALKER: That's right.

MR. DRURY: Your Honor, would the Court rule that way even though—

THE COURT: If there is no stated reason why these men didn't turn themselves in or make their presence known, I don't think the defense of duress will avail them.

MR. DRURY: Even if it can be shown that my client was frustrated in failure to have the proper authorities hear his complaint prior to his escape?

THE COURT: I think he has the obligation of making [275] his presence known. He can't unilaterally



take the law into his own hands, break out of jail and then hide.

MR. DRURY: Your Honor, I would submit that the crime occurs at the time that the exit from the jail happens and that the indictment here states that the escape and that the crime occurred at that time, and any action subsequent—

THE COURT: I would agree with you, but you have asserted the defense of duress. I am simply pointing out to you by way of information to the defense counsel and the defendant who is proceeding pro se, with the assistance of Mr. Armstrong, that that is something that must be shown to avail themselves in this defense. All right, bring in the jury.

\* \* \*

[296] FURTHER CROSS-EXAMINATION

BY MR. ROBBINS:

Q Mr. Robinson, do you recall yesterday afternoon being served with a subpoena by me?

A Yes, sir.

Q What did that subpoena request you to bring to court today? You can look at your notes if that would refresh your recollection.

A Records of the Adjustment Board concerning any meeting with actions taken concerning Mr. Ronald Clifton Cooley, during July and August of 1976.

Q Did you bring those requested records here to court today?

A I think we completed it.

\* \* \*

[302] Q Now, Mr. Robinson, did these represent the complete records of the Adjustment Board during July and August of 1976 as concerned Mr. Cooley?

A To the best of my knowledge, yes, sir.

Q And all of these records indicate if I am correct, that he was present and that you were present at least three times and the reason why he was present?

A Mr. Cooley chose on some occasions not to appear before the Board for review.

Q My question is: That that is all they indicate as to Mr. Cooley, that he was present, that you were present and the reason for his presence?

A Mr. Cooley chose at certain times not to appear before [303] the Board. On some of these dates he would not necessarily be present of his own choosing. I don't know whether he was present or not on certain dates here.

Q So, his name being on the list does not mean that he is there?

A That is correct.

Q And, there is nothing to indicate at all whether he made any complaints to you or to any members of the Board even if he were there?

A That is correct, sir.

Q So, the only record of complaints that he would make that you would know of would be from your own recollection?

A That is correct, or in writing.

Q And at many of those meetings you saw ten or more men, is that not correct?

A That is correct, sir.

MR. ROBBINS: I have nothing further, Your Honor.

\* \* \*

[305] BY THE DEFENDANT WALKER:

Q Mr. Robinson, would you tell the Court exactly what this is that has been marked Defendant's Exhibit Number 1, please, this book?

A This is a log book that was kept on Northeast 1 for this period of time.

Q It is a log book that is kept in the Northeast 1 housing unit?

A Northeast 1 housing unit.

Q Now, this log book that is kept, will you briefly explain to the Court what it entails, what it incorporates, what is kept in this log book?

A The log book of Northeast 1 should show time of relief and time of going off duty and all of the pertinent details.

Q All of the pertinent details?

A That happened during an officer's tour of duty.



Q Whose responsibility is it to write or report in or through this log book?

A Officers on duty.

Q Yesterday you testified that you read a log book or you read brief summaries of what is in a log book each morning, five days a week. Does this entail what you read or is this what you read daily?

A I didn't testify to that, Mr. Walker. I said I read [306] each morning shift supervisor's reports, which is this item here.

MR. SCHAARS: Your Honor, perhaps we could have that marked if that pertains to this time period that Mr. Robinson can refer to it.

THE DEPUTY CLERK: I will mark that as Walker Exhibit Number 1A.

(Whereupon, Defendant Walker's Exhibit Number 1A was marked for identification.)

BY THE DEFENDANT WALKER:

Q Now, would the supervisor's report that you read every morning have a summary of what went on in the log book that day?

A The supervisory report would be a condensation of the pertinent details that happened in the institution, including Northeast 1.

Q Who is the supervisor, who was considered as a supervisor?

A The ranking person on duty on that shift. It is normally a captain or lieutenant in his absence.

Q Do you ever, in your capacity as an assistant administrator, read this particular log book that comes out of Northeast 1?

A If I am in Northeast 1 I will check the log book, but we don't normally bring the log book out of the housing unit.

[307] Q Does any of your supervisors that are immediately under you—I'm referring to who made this, the captains, do they read this log book periodically?

A They are required to read the log book periodically the same way that I read it. We do not bring it out of

the housing unit. We visit the housing unit and we check the log book.

Q So, if incidents occur in a housing unit and it is recorded here, what other way is it for the employees that work on an administrative level to know that these incidents are taking place in the block?

A Anything that is important enough to record in the book, as far as incidents are concerned, officers are required to notify supervisors. Supervisors will write an incidental report and take whatever correctional action needed to be taken at that point. The incidental report would come up through the chain to the superintendent.

Q All right. I notice in the book it has Watch 1, Watch 2 and Watch 3. What does Watch 1, Watch 2 and Watch 3 signify?

A Okay. Watch 1 is shift 1 which is the tour of duty from 11:30 p.m. until 8:00 a.m. in the morning.

Watch 2, shift duty, 7:30 in the morning until 4:00 o'clock in the afternoon.

Watch 3 is shift 3, the tour of duty from 3:30 p.m. [308] in the afternoon until 12:00 o'clock at night.

Q Now, these records are kept by the senior officer in the block?

A The senior officer should keep it. If he is not in the booth then the officer in the booth keeps it. The senior officer does not stay in the booth for eight hours.

Q In other words, before each shift goes off he is required to make some type of report of the pertinent things that happened in the block?

A That is true, if there is a pertinent happening. If nothing happens over there he may just indicate when he came on, the number of keys he received and number of inmates in the housing unit.

Q Mr. Robinson, calling your attention to Watch 1 on 8-10-76, do you see any indication here where Officer Lessington, or Captain Ellis reported fires or said any fires were burning in the block?

A It indicates here that on 8-10-76 on Watch 1, that is the shift from 11:30 p.m. until 8:00 a.m., that Officer Lessington received a status report from the

officer he relieved that there had been some fires in Northeast 1.

Q Would you read the contents of this, please?

THE COURT: Is this in evidence?

THE DEPUTY CLERK: No.

MR. SCHAARS: It hasn't been moved in yet, Your Honor.

[309] THE COURT: Do you wish to move it into evidence?

THE DEFENDANT WALKER: Yes, I would like to move it in evidence.

THE COURT: Now, I take it this is a record kept in the ordinary course of business—

THE WITNESS: Yes.

THE COURT: —required to be kept and—

THE WITNESS: Yes.

THE COURT: —and entries are contemporaneously made?

In view of that, do you wish to be heard further?

MR. SCHAARS: No your Honor. Just one request I would like to make is that we be permitted to make xerox copies of all of the documents so that the book may be returned to its proper place.

THE DEFENDANT WALKER: Before we proceed?

THE COURT: No, you may proceed, but the original record will be returned to the institution and xerox copies will be made of the pertinent portions.

BY THE DEFENDANT WALKER:

Q Mr. Robinson, just this brief section, from here to here please.

THE DEPUTY CLERK: Is that 1 or 1A?

THE DEFENDANT WALKER: 1 and 1A.

THE DEPUTY CLERK: 1 and 1A received in evidence.

[310] (Whereupon, Defendant Walker's Exhibit Numbers 1 and 1A were received in evidence.)

THE COURT: All right, now you may ask him to read it.

BY THE DEFENDANT WALKER:

Q Would you read it, please, Mr. Robinson?

A On 8-10-76, 11:45 p.m., Officer Lessington came on duty. 1:50 p.m., Officer Lessington called Captain Ellis. Some of this I can't make out. Received the water and garbage, setting fires, throwing soap, when my second officer came seventy-nine people—

Q That is sufficient. May I indulge the Court for one minute, Your Honor?

THE COURT: Yes, the Court will indulge you for a minute.

THE DEFENDANT WALKER: Your Honor, do I understand from the ruling that this whole book is in evidence?

THE COURT: The ruling of the Court is that the book is accepted in evidence as a record kept in the regular course of business, however, it will be removed and returned to the institution and the pertinent portions will be photocopied and that will constitute the record in this case.

THE DEFENDANT WALKER: Thank you, Your Honor.

THE COURT: All right.

BY DEFENDANT WALKER:

[311] Q So, there was a fire and throwing garbage on 8-10-76, according to the records of this—

A According to the record.

Q Now, I'd like to move to 8-11-76, which was the next day and I'd like to direct your attention to Watch 1, I think that was signed by Mr. Fogg, and I would ask you to read that.

A Okay, Watch 1 on 8-11-76, Officer Clements, and Officer Fogg—

MR. DRURY: Your Honor, with the Court's indulgence, could the microphone be moved over.

THE COURT: All right.

THE WITNESS: 8-11-76, Watch Number 1, Officer Clements, Sanders and Fogg, secured. 12:00 o'clock count 76 residents. Unit is dirty with trash, food and burned clothing on all tiers.



BY THE DEFENDANT WALKER:

Q So, from this, Mr. Robinson, it indicates that there was burning on this date, also?

A That is the—

Q On 8-11-76, according to the record?

A That is true.

Q The next date we would like to move to is 8-16-76.

THE DEPUTY CLERK: That page hasn't been marked yet.

THE COURT: Well, the whole book will be in evidence. Mark the pages as you go along.

[312] THE DEFENDANT WALKER: That is what I indulged the attorney about.

THE COURT: Mr. Patterson will help you. Let him assist you.

THE DEFENDANT WALKER: Okay.

THE DEPUTY CLERK: This is Walker's 1-B, Your Honor.

THE COURT: All right.

(Whereupon, Defendant Walker's Exhibit Number 1-B was marked for identification.)

BY THE DEFENDANT WALKER:

Q All right, Mr. Robinson, I direct you to Defendant's Exhibit 1-B, at 8-16-76, and I ask you to read the section from 7:50 a.m. in the morning.

A This is Watch 2 on 8-16-76, 7:50 a.m. Believe number one count, 74. Unit is fouled up. Burning trash, water and sodas on floors. Second watch refused to take unit until ordered by Lieutenant Feidler. Informed by Number 1 watch detail refused to enter unit and Number 1 watch had to feed inmates. Officer Bimbo called and said that he would get some men to clean unit.

Q Now, at the top of the page, Mr. Robinson, you read what I asked you to read as Defendant's Exhibit 1, you read that: "Believe Number 1 watch, count 74, unit fouled up."

Is that what this reads?

[313] MR. SCHAARS: There is no doubt, but there is a bit of profanity there. I think Mr. Robinson is trying

to avoid putting that into the record. There is a bit of profanity put into quotes, if Mr. Walker wants to read it, let him read it. It is his exhibit.

THE COURT: Do you wish to read it, Mr. Walker?

THE DEFENDANT WALKER: Yes, I will read it. The language that is used in this particular exhibit, I think it shows—

THE COURT: Not what you think it shows, just read the language if you wish.

THE DEFENDANT WALKER: It says the unit is "fucked up." That burning trash, water et cetera is on floors.

Now, I would like to direct your attention to Watch 2 on 8-17-76, the next day and ask you to read that, Mr. Robinson.

THE WITNESS: Okay. 7:50 a.m., 8-17-76, unit still "fucked up". Count 72. Lieutenant Feidler present in Southeast 1.

BY THE DEFENDANT WALKER:

Q F-d up?

A Lieutenant Feidler left Southeast 1.

Q To avoid the use of profanity at the trial in respect to the people that are here, F-d up is what I had referred to a moment ago.

[314] THE COURT: All right.

BY THE DEFENDANT WALKER:

Q Now, on 8-18, which was two days later, Mr. Robinson, which is here on Watch 2, would you please read that section for us?

A 8-18-76, Number 2 watch, 7:50 a.m., unit still F-d up. Count 76. 11:25, Captain Lee in unit. 11:30—

Q You didn't read this part right here, Mr. Robinson. "No relief in sight."

A One razor and no relief in sight.

Q Thank you. That will be all from Mr. Walker.

THE COURT: Mr. Drury?

MR. DRURY: Just a few short questions.



## FURTHER CROSS-EXAMINATION

BY MR. DRURY:

Q Mr. Robinson, in reference to the day of August 13, 1976, there is a notation—

THE COURT: Now, Mr. Drury, Mr. Patterson will mark that page since we are going to duplicate pages to be utilized that will be marked.

MR. DRURY: Let me move on, I will not attempt to mark all of the incidents in here. I will refer to very briefly, the incidents that Mr. Walker-El had referred to.

Directing your attention to Defendant's Exhibit 1-B, Mr. Ralph Walker—in reference to the Watch Number 1, which [315] you read into the record, can you determine who wrote that entry, is there a signature on it?

A There is the officer's. One is Mr. Schneider. I don't know who made the entry.

Q But, one of the officers. Their names, Burton, Burgess and Schneider, appear, is that correct?

A That is correct.

Q That is on August 16, 1976; as you proceed down, there is another entry on August 17th, 1976 where the names are—it appears to be Burton and Schneider, right?

A That is right.

Q And the first entry at 7:50, is it correct to say that the writing appears the same on both the 7:50 entry and—

A I would say the writing appears to be the same.

Q And, is there also referring down here to the entry on August 18th, which is all on that one page, Your Honor, is there not also signatures after that and is the entry still the same. Does the writing still appear to be the same?

A The writing from the entries appear to be the same ones.

Q For at least three days, is that it? Is it fair for you to say that the same officer reported each and every time?

MR. SCHAARS: Your Honor, I object at this point. He has indicated that his experience as a layman they

appear to be the same. Mr. Robinson isn't an expert in handwriting. [316] The items are already in evidence. It is absolutely immaterial who wrote it.

MR. DRURY: I withdraw the question.

BY MR. DRURY:

Q Mr. Robinson, do I take it from the entries on this book that you were aware of this mutinous situation on the part of the operator—

MR. SCHAARS: Objection. It doesn't say "mutinous."

THE COURT: Of the situation, you may rephrase the question.

BY MR. DRURY:

Q Were you aware of the situation on Northeast 1?

A Yes, sir, I was well aware of the situation on Northeast 1.

Q And it was a problem of significant magnitude, was it not?

A Northeast 1 was a problem.

Q Any question during August 16, August 17 and August 18th that this was an incident of sufficient magnitude to warrant your immediate attention?

A Yes, sir.

Q And, of course, as soon as you were aware of this you went to Northeast 1 to attempt to straighten out any difficulties that your employees might have about working on Northeast 1, didn't you?

[317] A No, I did not.

Q Did you consider the action by Watch Number 2, whoever that involved—

A Right.

Q —did you consider that action, their refusal to go on to Northeast 1 and to assume their duties that day, did you consider that a violation of their employment?

A I—no, it is not a violation of the employment. An officer can refuse to take a post if the post is not in order.

Q Mr. Robinson, I note that there are people—that the correctional officers are referred to as officers and

lieutenants and captains. Do you have a particular denomination? Are you a captain or a general or—

MR. SCHAARS: Your Honor, I object.

MR. DRURY: I am merely trying to find out the line of authority.

THE COURT: The administrator.

MR. DRURY: I see.

BY MR. DRURY:

Q Now, accordingly you are the supervisor of these men who are on Northeast 1, is that correct?

A I'm not their direct supervisor, I am responsible.

Q It is your responsibility?

A My responsibility.

Q For the day to day operations of the security?

[318] A Of the jail, right.

Q And, these men refused to go on duty because of this unsightly mess that was on Northeast 1, is that correct?

A They didn't refuse to go on duty, sir, they refused to relieve the midnight shift on that particular post.

Q The entry says: "Refused to take unit until ordered by Lieutenant Feidler." Now, that is an entry by an employee, is that correct?

A I'm not denying that.

Q That watch detail refused to enter the unit. Now, were the conditions, from your investigation, so bad that they refused to go in there?

A You're getting the detail—that is the working detail assigned that unit, and you're getting the officer detail mixed up. There are two different segments there.

Q This is the cleanup crew, is that correct?

A This is the cleanup crew.

Q And it is their job to clean up this refuge, is it not?

A That is correct.

Q And they are getting paid for it?

A They are getting paid.

Q And if it was bad for them, did you ever make any type of an investigation to determine the complaints of the inmates who are locked in their cells?

A It wasn't the complaint, sir. It was that the detail [319] men were afraid to go into the unit, because of the inmates in Northeast 3 had threatened them repeatedly. They didn't want them to clean it up. They were threatened to come in and clean up or even feed. They were going to kill them.

Q But the inmates are locked in the cells?

A Inmates aren't always locked in the cells, sir. Everybody goes on the street. Everybody goes to Lorton. Everybody goes to the Federal penitentiary.

Q Northeast 1 is called dead lock?

A That is correct.

Q That means that the inmates are locked up in there unless they are specifically allowed out for showers or for eating or for bathing, is that correct?

A That is correct.

Q During this time period, these inmates were locked up, weren't they?

A That is correct, sir.

Q Now, there is a statement here that Officer Bimbo called and said that he would get some men to clean up the unit. I take it from the import of this entry at 7:50 on August 16, the reason the detail refused to go in there was because it was so dirty.

A That isn't the reason. The reason, sir, was that that particular detail was afraid.

Q Now, 24 hours later on the 17th of August, there is [320] a very cryptic statement: "The unit is still F-d up."

We will excise the little cussword that is there.

THE COURT: Now, Mr. Drury, do you have any more questions? Judge Hart had to go to a meeting of the judicial conference of the United States. His jury is out and they have asked a question. I promised to take the question and seek to answer the inquiry of that jury. If you have much more, I'll take a recess.

MR. DRURY: Yes, sir.

BY MR. DRURY:

Q 24 hours later then the cryptic statement that is made on August 17th, there is another statement on



August 18th, the unit is still "F-d up—count 76—one razor and no relief in sight." Now, that phrase, "relief in sight,"—

A Yes.

Q Are you telling this jury that for 48 straight hours you had a mutinous crew and there was no cleaning up of this Northeast 1 Sector?

A Yes. The unit was cleaned up. It does not say that the unit was never cleaned up. The unit was cleaned up. I think Officer Bimbo indicated he brought a crew in there and cleaned it up.

\* \* \*

BY MR. SCHAARS:

[330] Q Now, on the 16th of August, of 1976, when the Northeast 1 was referred to as the unit that was fouled up, who fouled it up?

A The residents, themselves.

Q Did the correctional officers participate and assist [331] in fouling it up?

A No, sir. You have to feed the residents. What they do with their food, after you give it to them is some of them eat it, some of them throw it out, some of them throw it on the floor, some of them even throw it at the officers. We have documented evidence, documented cases where the officers have been assaulted.

Q Now, I would like you to clarify, if you could for a moment, the two types of crews that you have on the Northeast 1. You have a cleanup crew and a crew of correctional officers.

A That is correct.

Q Would you distinguish between the two and describe for the ladies and gentlemen of the jury the function in particular of the cleanup crew?

A Well, the inmate detail crew, which is the cleanup crew, when I say detail, it is not cleanup, they also come in and feed the residents. This is, they bring trays and take it down to them and feed them and when they are finished eating, they pick up the plates and take the food out and they do all of the cleaning.

Q Are these individual employees of the Department of Corrections or trustees?

A They are detailed inmates who have been classified as a less security risk than some of the other inmates and they are paid a small fee, not a large amount of money, but they [332] are paid for their labors.

Q Was it these inmates who refused to go into the Northeast 1 on this particular occasion?

A That is true, sir.

Q That is, on the 16th and 17th and 18th of August, 1976?

A During that period, yes, sir.

Q Now, you indicated at least in partial response to one of counsel's questions, that one of Mr. Drury's questions, that this detail was threatened with death and bodily harm?

A These are fellow inmates.

Q And these are inmates who would associate with people from maximum security if they got off maximum security and went back into the general population?

A That is correct.

Q These are inmates who may also associate with people who had been on maximum security whether they wound up at Lorton or another correctional institution?

A That is correct.

Q So, is it fair to say in parlance and dealings within that institution, the inmates who refused to go in were acting pretty wise at that point, because they probably could have gotten harmed?

THE DEFENDANT WALKER: Objection.

MR. DRURY: Objection. It is leading.

[333] THE COURT: It is cross-examination, of course, but this man is essentially a Government witness, so I would ask you to refrain from cross-examination from questions that normally you would ask on cross-examination to an adverse witness. I think you can do that without any difficulty.

BY MR. SCHAARS:

Q Can you draw any conclusions, sir, based on your experience, number of years as a correctional officer and tour within the Department of Correction, as to the wisdom or lack of wisdom as to these inmates going to Northeast 1 on these three days?



MR. DRURY: I object to that.

THE COURT: No, I think that is a proper question. Overruled.

THE WITNESS: Based on my past experience, it was a very prudent decision on the part of the residents to refuse to go in. I only found one man who was totally unafraid to go into Northeast 1, and I imposed on the Major to detail him to Northeast 1. They couldn't frighten him, so they tried to get rid of him by complaining to me that he was mistreating them, but I kept him in there.

Q This was another inmate?

A This was another inmate.

Q Despite the threats who would go in there?

A Despite the threats.

[334] Q Now, Mr. Drury questioned you with regard to the gentlemen in Northeast 1 as being locked up, what can they do if they are locked up, in your experience can they do anything?

A Well, you have to let a man out, you have to let him out to shower. You have to let him out to go to his visits. You have to let him out to go to medical, even if he is locked up, you have to feed him. You have to give him a trade. You have to give him a broom so they can sweep his cell out and a broom handle broken in half, in two, makes an excellent spear and people get hurt.

[348] THE DEFENDANT WALKER: The defense would like to call Officer Trent, please.

Whereupon,

BARRY ORLANDO TRENT

[349] was called as a witness by and on behalf of the Defendant Walker and after having been duly sworn was examined and testified as follows:

#### DIRECT EXAMINATION

BY THE DEFENDANT WALKER:

Q Would you state for the Court your full name, please?

A My name is Barry Orlando Trent.

Q Where are you presently employed, Mr. Trent?

A I am employed with the D.C. Department of Corrections.

Q Is that at the new D.C. Detention Facility?

A Yes, it is.

Q Were you employed there between July 1st and August 26, 1976?

A Yes, I was.

Q Uh-huh. And during that time what was your official capacity or function at the detention facility?

A Correction officer.

\* \* \* \*

[353] BY THE DEFENDANT WALKER:

Q Now, Mr. Trent, during the period that you worked in Northeast 1 housing unit as a correctional officer, were there any fires or burnings to your knowledge?

MR. SCHAARS: I would object. Any is a pretty broad term. Perhaps Mr. Walker can be more specific in terms of time frame.

THE COURT: You may ask the question during the month we are concerned with, July and August of '76.

BY THE DEFENDANT WALKER:

Q During the period of August 1st and 26, were there any fires in the Northeast 1 housing unit to your knowledge?

A Yes.

Q Mr. Trent, I know you probably can't remember exact days of fires that took place in that particular housing unit, but is it possible for you to demonstrate to the Court the frequency of the fires that took place in that unit?

A It varied. Sometimes you might have one or two and sometimes you might have none.

Q Would you say that there was at least a fire every week?

A Yes, sir.

[354] Q Would you say that there were possibly at least two every week?

A Yes.

Q Uh-huh. From your recollection, Mr. Trent, how long did the fires usually last?

A About five or seven minutes.

Q From your recollection, Mr. Trent, when these fires took place was it difficult to breathe in the block?

A No.

Q To your recollection, is there any fire equipment in Northeast 1 housing unit?

A Yes.

Q And where is that fire equipment located?

A It is located in the booth where the officer sits.

Q Whose function is it to extinguish fires?

A We have three officers in the block. One officer is in the booth, two on the floor.

Q Between August the 1st and August 26th, during the time you worked at the Northeast 1 housing unit, Mr. Trent, were there any incidents of beatings by inmates or correctional officers beating inmates?

A No.

\* \* \*

[356] CROSS-EXAMINATION

BY MR. DRURY:

Q Officer, my name is John Drury and I represent Clifton Bailey, Clifford Bailey in this case. You stated that the fires sometimes ran to two fires a week, is that correct?

A Yes.

Q And at most they were five to seven minutes in duration, is that correct?

A Yes.

Q And these fires started sometime in June and ran into August, is that right?

A No.

Q When did they start?

A July and August.

Q July and August. So, that is approximately an eight to ten week period, is it not?

A Yes.

MR. SCHAARS: It is obvious what length of period it is.

THE COURT: Yes, Mr. Drury, don't trespass any more than you really have to.

BY MR. DRURY:

[357] Q Do you remember if any fire included or extended beyond a period of five to seven minutes?

A No.

Q What were the items used in starting these fires?

A Sheets, mattresses, towels.

Q And how would the fire be extinguished?

A With a fire extinguisher.

Q Who would do it, a correctional officer?

A Every time I was in the unit I did it.

Q I see. And, isn't it a fact from your knowledge you know that more than one prisoner was taken out and treated, medically, for smoke inhalation?

A No.

Q You never knew any officer or—strike that.

You never knew of any prisoner who was ever treated for smoke inhalation?

MR. SCHAARS: He has answered the question. Mr. Drury is asking each question twice.

THE COURT: Well, not each question. Once is enough, Mr. Drury.

BY MR. DRURY:

Q Have you ever assisted a prisoner to the sick bay or to the medical area?

A No.

Q Now, directing your attention to the period of June, [358] July and August of 1976, from your personal knowledge or own observations or from your readings in the log book, do you know whether any prisoner—or from any other source, do you know whether any prisoners were ever taken to a medical facility?

A For what reason?

Q For any reason. For a cut, for a bruise or smoke inhalation.

A Yes, sir.

Q And, do you remember if that was on Northeast 1, sir? Do you remember the cause for which they were taken—



MR. SCHAARS: Your Honor, I object at this point. Mr. Drury represents Mr. Bailey.

THE COURT: Yes. That is right. I am limiting your interrogation to Mr. Bailey. You have asked for records from the infirmary. I suppose that would be the best evidence.

MR. DRURY: Yes, sir.

BY MR. DRURY:

Q Do you know my client, Clifford Bailey?

A Yes, sir.

Q And, do you know him as a resident of Northeast 1?

A Yes, sir.

Q And have you ever been present or from your personal knowledge, do you know whether he has ever incurred any beatings by the correctional officers there?

A No.

[359] Q Do you know from your own personal knowledge whether he has ever been the subject of any smoke inhalation?

A No.

Q I see. I have no further questions.

THE COURT: Mr. Robbins.

### CROSS-EXAMINATION

BY MR. ROBBINS:

Q Officer Trent, when a fire starts it takes about five or seven minutes for it to be extinguished, is that your testimony?

A Yes.

Q And does that refer to the flames only?

A No.

Q The smoke is all gone in the unit in five or seven minutes?

A Sometimes.

Q Other times it lasts longer, right?

A True.

Q How long is that?

A Probably fifteen minutes.

Q How does the smoke get out of the unit?

A Through the windows.

Q Aren't the windows shut?

A At that particular time the windows had been pried open by the residents calling out on the streets to the visitors [360] going past so the ventilation was pretty free, but the ventilation in the inside system was open.

Q Is there any other type of ventilation inside? Are there any fans in the unit?

A Once in awhile, sometimes we put fans up to get the smoke out of the unit.

Q Where would you put those fans?

A On the side that had the most smoke.

Q And, could you approximate the size of the units, of Northeast 1 unit?

A Forty cells on each side.

Q And the smoke at times would fill up the entire unit?

A No.

Q You could control the smoke before it got through the rest of the unit?

A No, sometimes it would all be on one side.

Q What would permit it from getting to the other side?

A Sometimes smoke is not that heavy on the other side and wouldn't reach the other side.

Q Sometimes it would, and it would take a significant period of time before all of that smoke was gone?

A Yes, sir.

MR. ROBBINS: I have nothing further.

\* \* \*

[362] BY MR. SCHAARS:

Q Officer Trent, when these fires were started and you went to put them out, did you ever wait a significant period of time before you went in there to put them out?

A No.

Q If you saw a fire start in Northeast 1, what would be the first thing that you would do?

A The first thing I'd do is tell the officer in the booth, call up the man, tell them we have a fire in the unit

and then I get the fire extinguisher and try to put the fire out.

Q Is the booth also the bubble?

[363] A Yes.

Q What would you estimate, if you can, sir, your reaction time would be from the time that you discover a fire to the time you got there and tried to put it out?

A Two, three minutes.

Q In your experience in that cellblock during July and August of 1976, did you and the other officer who was out in the cellblock itself, ever decide to retire to the bubble or the booth to wait out a fire?

A No.

Q Have you ever known that to happen in that cellblock?

A No.

MR. SCHAARS: No further questions, Your Honor.

\* \* \* \*

[365] OLIVER BOLING

was called as a witness by and on behalf of the Defendant Bailey and, after having been duly sworn was examined and testified as follows:

#### DIRECT EXAMINATION

[366] BY MR. DRURY:

Q Sir, my name is John Drury. I represent Clifton, Clifford Bailey in this case. What is your name, please?

A Oliver Boling.

Q Where are you residing at the present time?

A At the new jail facility, 1901 D Street, Southeast.

Q What section of the jail?

A Maximum security, supposedly Northeast 1.

Q What cell are you in?

A Cell 62.

Q Did there come a time in the month of July, July and August that you had an occasion to be placed at the D.C. Jail, the new D.C. Jail facility?

A Yes.

Q What section were you placed in in the new D.C. Jail facility?

A Section Northeast 1.

Q How long have you been in Northeast 1?

A I have been in Northeast 1 for nine months.

Q Is that called the 'dead lock' section?

A Yes, it is.

Q Do you know my client, Clifford Bailey?

A Yes, I recognize the defendant.

Q How do you know him? How do you recognize him?

A I recognize him, first of all he's about five or six [367] cells from me and, you know, I used to trade books, you know, I used to do a lot of reading, so I just traded books with him.

Q Have you ever, personally, had an extended conversation with him?

A Only on one occasion.

Q When?

A When? Right before the incident, or incident was supposed to have occurred, Officer or Lieutenant—

Q You had a conversation?

A Right.

Q Let me go into that later. When did you have an opportunity to trade books with my client, Clifford Bailey?

A That is once in a blue moon.

Q Okay. Directing your attention, specifically, to the month of July and August, do I take it that you were not in dead lock prior to July at the new D.C. Jail facility?

A Right.

Q Have you ever witnessed or been a victim of any beatings in Northeast 1?

MR. SCHAARS: Objection, Your Honor. The question is not whether Mr. Boling has been the victim of anything, it is whether Mr. Bailey has been, and also the question is a leading question.

THE COURT: Suppose you go into your client's [368] experiences first.

BY MR. DRURY:

Q Did there come a time in August that you learned that Clifford Bailey had left the jail?

A Yes.



Q Preceding that date or that time, had you ever, personally, observed or from your senses determined that my client was being beaten by any jail guards?

A I can recall that he had.

Q Can you tell the ladies and gentlemen of the jury in narrative form how you can tell and what happened and what you saw or heard?

A Well, first of all my cell is, like five cells like I said once before, down from him. One particular evening I heard this racket at the door, because I'm right at the door, and it is about six or seven guards came into the cellblock, you know, they came in, they came right down to Bailey's cell. One pulled out a blackjack, the other one reached in his pocket and pulled out a can of mace and they proceeded into the cell, then I heard a couple of moans, a couple of groans you know. Then they came out of the cell and shut the cell back and then that was it.

Q Did there ever come a point in time that you personally were aware from your own senses of the threat directed against my client?

[369] A Yes.

Q Did you ever communicate that threat to my client?

A Yes.

Q Tell us how you became aware of that threat in your own words and as descriptively as possible.

A Okay. First of all, Captain Dickinson, Officer Webb and Sergeant Curran, came to my cell one morning and they say, "Boling . . ."—can I say what the words are?

Q Please.

A "We're going to bust your god damn ass." You know, I said, "For what?" You know, they said, "God dammit, you think you're rough." I say, well, you know, like I'm speaking out for my rights. And he said, "God dammit we're going to get your buddy, that nigger Bailey." 'We're going to kill him.' And, Officer Webb went into his pocket and pulled out a little knife, looked like a Boy Scout knife and said, "We're going to do it nice and quiet."

Q What did you do after hearing about this?

A Well, after I learned about it, the first thing I did was to inform the brother, you know, so he would be—

Q The "brother" meaning—

A Bailey.

Q How did you communicate it to him?

A The only time I was able to communicate that was when I got a visit, you know, that I was allowed to come out [370] during that period of time.

Q Tell us exactly what you did and how many days after you heard the threat and how, during being transported to a visit you talked to my client.

A I'm not clear on what you said.

Q You said that during a visit—

A Right.

Q —you left your cell—

A Right.

Q —and, did you have an opportunity to talk to Clifford Bailey?

A Right. Right.

Q Where?

A In his cell.

Q For how long?

A Approximately, about four minutes.

Q And who was being visited on that day?

A Who was being visited? I had a visitor.

Q I see.

A Right.

Q Were you taken out of your cell by the authorities?

A Right.

Q What occasioned the opportunity for you to talk or stop and talk to my client?

MR. SCHAARS: Your Honor, I object. We already had [371] testimony from this witness that he spoke to Mr. Bailey. I frankly don't see what the point is, how he happened to speak to him is relevant at all.

THE COURT: You may ask the question.

THE WITNESS: Well, when I came out of the cell, the particular officer that was carrying me to my visit, he forgot the handcuffs so he went up to the booth and during that time I was out without any handcuffs and I walked down to Bailey's cell.

BY MR. DRURY:

Q Now, were you aware of any fires that occurred on the hall or in the jail in Northeast 1?

A Yeah, I'm very, very much aware.

Q Can you tell us the nature of those fires or how they were started, how long they existed and who put them out?

A Yes. There is one particular officer in mind. Officer Webb, sometimes he comes in there and gets a paper bag and the cell that we are in doesn't have any windows, so he goes exactly right to, near Bailey's cell and pushes the bag in there and sets it on fire, you know, and then he adds a little bit more to it, him and his other officer that would be on with him.

Q Who else starts fires?

A Sometimes the inmates start them, too.

Q How long are they allowed to burn?

[372] A They are allowed to burn—an hour is the longest, maybe, sometimes longer.

Q Was this occurring, in your time frame, was this occurring when you were in dead lock between the time you came, in July, and the time that the escape occurred, in August?

A Right.

MR. DRURY: No further questions.

#### CROSS-EXAMINATION

BY MR. ROBBINS:

Q Mr. Boling, my name is Bob Robbins. I represent Mr. Cooley. Do you know Mr. Cooley?

A I know him by being an inmate, yes, I do.

Q Where, specifically in the institution did you know him?

A In the section, Northeast 1.

Q During what period of time was that that you knew him?

A In July.

Q Of what year?

A '76.

Q Did it extend any longer than that period of time that you knew him?

A Well, you know, I knew him, you know, by my being in the institution on the same side. See, they have certain cells with no windows. He was in one of them.

[373] Q Was he there in August of '76?

A To my recollection he was.

Q Were you aware that Mr. Cooley left the jail on August the 26th?

A Was I aware?

Q Yes.

A Yeah. Yeah. I was aware, you know, after I heard about it, you know.

Q And in the days and weeks prior to that time, did you ever see Mr. Cooley injured in any way?

A Well, rumors, occasions, you know, I had seen the officers—

MR. SCHAARS: Objection, Your Honor. If it is rumors.

THE COURT: Just answer the question.

BY MR. ROBBINS:

Q Did you see—

A Right.

THE COURT: Did you see?

THE WITNESS: Right.

BY MR. ROBBINS:

Q Did you see any injuries that Mr. Cooley had in the weeks and days before August the 26th?

A His lip was busted.

Q And, do you know how his lip became busted?

A I seen the officer take a blackjack and hit him in [374] the face.

Q Where did that occur?

A I seen that occur in the hall.

Q What hall are you referring to?

A The hall leading to Northeast 1.

Q Could you describe the slap, how it occurred, if you know?

A I was coming off of a visit and, you know, it was about two or three officers, you know, I was wondering



who they had, you know, in the corner. I saw the officer came back with the slapjack and when he come up I saw Cooley over there. He had got hit in the mouth.

Q With a slapjack?

A Right.

Q What do you mean by a slapjack?

A A slapjack is a leather ornament that police normally carry with a piece of steel on the inside of it, you know, this is what they use, you know.

Q Were there any other occasions when you saw Mr. Cooley injured?

A I seen him roughed up quite a few times in front of my cell.

Q This is right in front of your cell?

A In front of my cell.

Q How could you see out of your cell?

[375] A Well, we have bars and his was about three doors from me, I couldn't help but see it.

Q Can you estimate how many feet it was away from you?

A I'd say about 13 feet.

Q Can you describe the injury that Mr. Cooley incurred because of this attack?

A Well, you know, later that night he had complained about his side.

Q Were you ever a witness to any threats made to Mr. Cooley?

A Well, you know, like my booth, my cell is sitting right next door to the booth. I have heard officers come inside the booth and ask about Cooley and on two occasions I can recall them saying that they were going to kick his ass good.

Q Did they give any reason why they were going to do that?

A No, you know, I got back from the cell. The officer was looking at me like he wants to come down and jump on me because I was standing there, so you know, I didn't hear anymore.

MR. ROBBINS: I have nothing further, Your Honor.

THE COURT: Mr. Walker?

## CROSS-EXAMINATION

### BY THE DEFENDANT WALKER:

[376] Q Mr. Boling, you presently reside at the D.C. detention facility, 1901 D Street, Southeast?

A Yes, I am.

Q In what part of the location—you are in Northeast 1?

A Yes.

Q The deadlock section?

A Right.

Q What is your cell location?

A My cell location is cell 62. It is right—as you are coming from the door, right in front on the booth.

Q What is my cell location?

A Your cell location was over on the other side.

Q What is my cell location now?

A Your cell location is about two doors from me.

Q When were you first committed to the detention facility?

A The early part of July.

Q So, you were housed there between July 11 and August 26th?

A Right.

Q You are familiar with me?

A Right.

Q You know my name?

A Right.

[377] THE DEFENDANT WALKER: Ralph Walker-El. Will the Court show that the defendant has identified Ralph Walker?

### BY THE DEFENDANT WALKER:

Q You are aware that an escape allegedly took place at the D.C. detention facility sometime in August of 1976?

A Right.

Q Are you able to tell exactly what day that alleged escape took place?

A To my recollection, I can't recall the precise date, but I knew that it was in August.

Q Now, you spoke about the burnings that took place in the cell house?

A Right. Right.

Q To your recollection, how often did the burnings take place during this period between July 1st and August the 26th?

A It was every day.

Q Every day?

A Every day.

Q All right. You say the fires lasted approximately an hour?

A Hour.

Q As far as being able to breathe freely during the time the fires were burning when the smoke was in the block, were you able to breathe freely?

[378] A No, I wasn't

Q Did you do anything to help accommodate you as far as your freedom of breathing?

A I tell you how I did breathe. The toilet that we have is a big round commode. It was cold water coming up from it, and the block gets smoky and I have to get on my knees and stick my head in the toilet in order to breathe I have a cell with no window. There is no ventilating system there, so this is how I breathe after a period of time.

Q Is there any type of fire equipment in Northeast 1, to your knowledge?

A They got about two fire extinguishers, but they stay empty.

Q Do the officers ever put these fires out?

A No, the just let them burn until they burn out.

Q You say that sometimes the inmates started the fires and sometimes the officers.

A Right.

Q You have witnessed starting fires too?

A I have witnessed it.

Q All right. Have you ever requested medical attention for smoke inhalation?

MR. SCHAARS: Objection, Your Honor. It is not a matter whether this gentleman has requested attention, whether or not Mr. Walker has.

[379] THE COURT: Sustained.  
THE DEFENDANT WALKER: All right.

BY THE DEFENDANT WALKER:

Q What if an individual gets sick during the evening or night, is it possible to get to the hospital from Northeast 1?

A It is very, very likely that he would get there.

THE DEFENDANT WALKER: I have no further questions from Mr. Boling.

THE COURT: Mr. Schaars.

### CROSS-EXAMINATION

BY MR. SCHAARS:

Q Sir, I'd like to speak to you and ask you questions initially about your answers to questions from Mr. Drury, Mr. Bailey's counsel.

You indicated that there was a time that you saw six or seven guards come to the cellblock with a blackjack, and mace, and you heard moans and groans.

A Right.

Q And, you concluded that those means and groans were from whom?

A Bailey.

Q Did you see Mr. Bailey at that time?

A Did I see him? He was hanging halfway outside the door.

[380] Q Outside of which door, sir?

A Cell door.

Q He was clearly within your view, eyesight?

A I could see it.

Q Do you know when this occurred, sir?

A Do I know when it occurred? It occurred in August, the first part.

Q The first part of August. Would that be before the 15th? August has 31 days, would it be safe to say it was before the 15th?

A Yes.

Q Now, sir, you have indicated that there was also a time that Mr. Bailey was apparently told that he was going to be killed?

A I didn't say that.



- Q You were told he was going to be killed?  
 A Right. Right. Right.  
 Q Do you know when that was, sir?  
 A It was the early part of—late part of July.  
 Q Would that be from the 20th to the 31st?  
 A From the 20th to the 31st? Right.  
 Q Now, you also indicated that you had an opportunity to communicate that threat to Mr. Bailey?  
 A Right.  
 Q How soon after you heard that threat were you [381] able to communicate that threat to him?  
 A As soon as I got out for a visit.  
 Q Well, sir, what I'm asking is in terms of minutes, hours, or days, when was it?  
 A It was about two days later.  
 Q So, would that still put that in July, sir? Would that be fair to say that it was sometime in July that you warned him?  
 A About the end.  
 Q Now, sir, it is your testimony that although the inmates started some of the fires, some of the correctional officers started some as well, is that correct?  
 A That is correct.  
 Q And these fires burned for an hour, right?  
 A Right.  
 Q What is used to get these fires going by the correctional officers?  
 A Well, you know, one particular officer, where he gets the trash bag, they have plastic containers with trash in it and he gets the trash bag and goes right down to Bailey's.  
 Q That is Mr. Bailey?  
 A Right. Right near his cell. I used to wonder why he used to go down there, but he'd go there and set it on fire.  
 Q How long would a trash bag burn?  
 A Well, it would probably burn about ten minutes.  
 [382] Q Ten minutes. But, see, first of all let me stipulate they keep on putting trash on top of trash.  
 Q So, he returned to feed the fire?  
 A Right.

- Q Would he stand there and watch the fire burning?  
 A No, he sits up in the booth.  
 Q As soon as the fires die down, he returns?  
 A Right. Until they run out of trash.  
 Q Let's talk about Mr. Cooley, sir.  
 You indicated that you noticed that Mr. Cooley had his lip busted?  
 A Right.  
 Q Do you know when that was, sir?  
 A I can't recall the precise date.  
 Q Well, sir, would it have been in July or August?  
 A Coming into August.  
 Q Well, would it be fair to say that it was within the first ten days of August?  
 A Well, I'm not going to say. I'm not sure. I recall the incident.  
 Q What I'm trying to ask you, if you can say, by coming into August, what do you mean?  
 THE DEFENDANT WALKER: Objection, Your Honor. He said he couldn't answer the question. He didn't know.  
 MR. SCHAARS: Very well, Your Honor. I will withdraw [383] the question.  
 BY MR. SCHARRS:  
 Q Now, you indicated that there came a time when two or three officers had Mr. Cooley in a corner.  
 A Right.  
 Q Do you know when that was?  
 A This came in as a surprise to me. I can't give you verbatim the day.  
 Q I'm sure it was a surprise to you, but what I'm asking is: Can you put it in terms of month, July or August?  
 A I cannot say. I cannot say.  
 Q Now, sir, you knew Mr. Bailey and you knew Mr. Walker and you knew Mr. Cooley, is that true, sir?  
 A You know, know of them by the inmates in the block.  
 Q Did you know that there was a time you no longer saw them on the block in August of 1976?  
 A I remember that.

Q One day they were there, the next day they weren't?

A I'm not saying that.

Q Well, how would you characterize it, sir?

A I characterize it they were there month with me before they were gone.

Q But, there was a time when they weren't there anymore?

A Right. There was a time.

Q Do you know whether or not they were released by the [384] correctional authorities?

A I have no idea. I'm not nosey.

Q Yes, you managed to see just about everything that goes on in the cellblock, right?

A When it makes noise and racket.

Q You're able to distinguish moans and groans and who they belong to?

A Right. I can tell voices.

MR. SCHAARS: No further questions, Your Honor.

MR. DRURY: Nothing further, Your Honor.

MR. ROBBINS: Just a couple of questions, Your Honor.

#### RECROSS-EXAMINATION

BY MR. ROBBINS:

Q Mr. Boling, August 26, does stand in your mind as a date you remember, does it not?

A Right.

Q How long before that, how much earlier did the officers hit Mr. Cooley in the face with a slapjack?

A I want to be right. I don't know if it was June or—I don't want to say June or July when it might have happened in August. I have to go for July. I have to go with July.

Q What about the—when the officers had him in the corner and were beating him. How much time elapsed between [385] that and August 26th?

A How much time did elapse?

Q When did that occur in relation to August 26th?

A I can't recall. I can't recall. See, the first time when he got slapped was in July that I had told you. I said he got backed up against the cell door.

Q Uh-huh. And the other incident occurred after that?

A The other incident occurred before that.

Q Okay.

MR. ROBBINS: Thank you, Mr. Boling.

MR. DRURY: I have no questions, Your Honor.

\* \* \* \*

[386]

GARLAND HINES

was called as a witness by and on behalf of the defendant Cooley and after having been duly sworn was examined and testified as follows:

#### DIRECT EXAMINATION

BY MR. ROBBINS:

Q Mr. Hines, in a loud, clear voice so everybody in the courtroom can hear you, would you state your full name?

A Garland Hines.

Q Where do you currently live?

A Lorton Reformatory.

Q And in July and August of last year, 1976, where did you live?

A Up in the new jail, 1901 D Street, Southeast.

Q Did you live in a specific location at that place?

A Yes, I did.

Q Where was that?

A Northeast 1.

Q Did you know at Northeast 1 a man named, Ronald Cooley?

[387] A Yes, I did.

Q And could you point him out if he is in the courtroom?

A Right there.

Q Would you describe what he's wearing?

A He's wearing a blue sweatshirt, white shirt.



MR. ROBBINS: Indicating the defendant, Your Honor.

THE COURT: Yes.

BY MR. ROBBINS:

Q Now, during that time were you ever aware by your observations of any injuries that Mr. Cooley had?

A Yes, I do.

Q Would you describe those to the Court?

A Well, one incident was when I was standing in my cell, when two officers was escorted Mr. Cooley back from Court. We know Mr. Cooley was going down the hallway and one officer was pushing him. Mr. Cooley said, "You don't have to push me." He said, "I can walk." At the time he was handcuffed. Officer Smith said, "Look, just shut up, keep moving." You know, so Cooley said, "Man, I told you I could walk, man, you don't have to push me." So, he turned around—Cooley turned around trying to defend himself. He turned around and the officer pushed him. Officer Smith pulled out a big stick, a blackjack and hit him across the face. Another officer—I don't recall his name, I know him when I see him, he sprayed some tear gas in his face. Mr. Cooley came on the unit and his [388] face was bleeding and his hands were up like this over his face, you know.

Q Do you remember specifically when this occurred?

A I can't recall the date. I think it was in July or August.

Q And are you aware of any other similar incidents?

A Right. A few times the officers had opened up his cell, you know, come in and threatened him, I understand they jumped on him a few times trying to say he was setting fires and things.

Q Could you see what occurred?

A No, I couldn't really see, but if you was there you would know that something was happening in there, you could see the scuffling and everything.

Q Where was your cell in relation to Mr. Cooley's cell?

A About nine cells away from him on the second floor.

Q On the second floor?

A Right.

Q Now, the incident that you described earlier with the blackjack, could you actually see that happening?

A Right, because my window was broke, you know, my window was facing the hallway.

Q So you looked out your window into the hall?

A Right.

Q Are there any other incidents in regards to Mr. [389] Cooley that you saw?

A Right. I saw the officers come down one day when there was a big fire, about four or five mattresses being set afire, and Officer—I mean Captain Dickinson, and a few more goon squad officers came in with him. They came into Cooley's cell and another cell to a guy by the name of Sonny, and he said, "Look . . ."—he said, "I knew you two, the only two down here responsible for these fires." He said, "If another fire's set tonight or any other time, I'm going to have both of your cells, and I'm going to come down and kill you." And, Officer Webb said, "I'm coming in there, too, because I don't want you anyway."

Q Now, are you aware, Mr. Hines, of whether or not—strike that.

Does the 26th of August, 1976, stand in your mind for any reason?

A Yes.

Q What happened on August 26th with regard to Mr. Cooley?

A Well, that was the day that he escaped, right?

Q When did these incidents that you have just related to the Court, the attacks with the subject and the cell with the threats, when did they occur in relation to August 26?

A About two or three weeks.

Q Before that time?

[390] A Uh-huh.

Q Were you aware of any fires ever happening in Northeast 1?

A Oh, they had been quite frequently, almost every day.

Q And, about how long would a fire last after it started?

A Well, the fires—the flames themselves would be something like an hour and a half, but after the flames go away the smoke would still be there, the thick smoke.

Q How long would the smoke continue?

A All night. All night.

MR. ROBBINS: Nothing further, Your Honor.

### CROSS-EXAMINATION

BY MR. DRURY:

Q Mr. Hines, my name is John Drury. I am the attorney for Mr. Clifford Bailey. I have never met you before, have I?

A No, you haven't.

Q Speak up, please.

A No, you haven't.

Q Thank you. Do you know Clifford Bailey?

A Not personally, but he was the inmate at the jail at the time that I was up there.

Q Is he known as Sonny?

A Right.

[391] Q Are you presently incarcerated in Northeast 1?

A Northeast 1, now.

Q Yes.

A No, I'm not.

Q Where are you now?

A I'm at Lorton Reformatory.

Q Directing your attention to June, July and August of 1976, were you in Northeast 1 or dead lock at that time?

A In July of—I was, I think I came over there July 1st. The first week of July or the second week of July.

Q How long did you stay?

A I stayed for a month. I stayed for a month the first time. I stayed for a month the first time.

Q And, did you know of an escape that occurred from the new D.C. Jail complex in the latter part of August 1976?

A Right after it happened.

Q And were you in dead lock at the time that it occurred?

A Yes, I was.

Q So that it was a matter of some significance in dead lock that three or four individuals had escaped, is that correct?

A Say that again.

Q It was a matter of some significance to you being a resident of dead lock that an escape occurred, is that right?

[392] A Right.

Q Did you find out that one of the people that escaped was Sonny Bailey or Clifford Bailey?

A Say that again.

Q Did you find out that one of the persons who escaped was Sonny Bailey or Clifford Bailey?

A Right.

Q Have you ever talked personally to Clifford Bailey prior to coming down and testifying in this case?

A No, I haven't.

Q Have you ever talked—strike that.

During the summer months, July and August of 1976, did you have any personal face to face conversation with my client, Clifford Bailey?

A Say that again.

Q Did you have any conversation, did you talk to him?

A Did I talk to him?

Q Yes.

A About the case?

Q No. About anything.

A No.

Q What cell were you in during that time period?

A I was in two cells. I was in cell 57 and 34.

Q Do you know what cell Clifford Bailey was in?

A I think he was in cell 67 or 68.

[393] Q And on what occasions would you have an opportunity to see Mr. Bailey?

A When he was coming out, going on his visits or when he was standing up in the cell.



Q Did you ever have any long conversations with him?

A No, I didn't.

Q Were you ever aware of any beatings that were administered to my client during July and August of 1976?

A A couple of times.

Q Now, when did they occur? Did they occur in July or in August as best you can recall?

A I think about the second week in August.

Q Now, who would administer these beatings to him?

A Well, I don't know the officer's name, but I probably know him if I see him again.

Q Okay. Would they beat him up in the cell or outside of the cell?

A Beat him up in the cell.

Q Do you know why they beat up Sonny Bailey?

A They thought he was—

MR. SCHAARS: Objection.

THE COURT: I will let it in.

THE WITNESS: —responsible for the fires and flooding that was happening in the unit.

BY MR. DRURY:

[394] Q I see. From your personal knowledge, did you know if Clifford Bailey ever filed a lawsuit in Superior Court against—

A No, I don't.

Q —any guards?

Did you ever become aware that a threat had been made by some guards against my client, Clifford Bailey?

A Yes, I have.

Q How did you happen to come to that information? How did you learn about it?

A Because I heard—overhead Captain Dickinson and Officer Webb say it.

Q Do you remember what they said?

A When I told him—he said, "The next time a fire is set in here. . ."—he was going to open Mr. Sonny's cell and Ronald Cooley's you understand, he was going to kill him because he knows he was responsible for doing it.

Q Do you remember as best as you can, what time period, when this occurred, this statement, sir?

A It was in the evening. I don't recall the time.

Q You don't remember the month or the day?

A It was in August. It was in August.

Q Do you remember the conditions of the cellblock during mid-August?

A Right.

[395] MR. SCHAARS: Objection.

THE COURT: Overruled.

BY MR. DRURY:

Q Was there a period of time in mid-August that the floors were covered with garbage and refuse?

A Right. This was about two weeks straight.

Q Do you remember whether anyone cleaned it up?

A No, I don't.

Q Do you remember—strike that.

I have no further questions.

THE COURT: Any questions, Mr. Walker?

THE DEFENDANT WALKER: I have no questions.

THE COURT: All right, Mr. Schaars?

CROSS-EXAMINATION

BY MR. SCHAARS:

Q Mr. Hines, you have indicated in response to a question from Mr. Robbins, as Mr. Cooley's attorney that two escort officers or convey officers, as you referred to them, hit Mr. Cooley?

A Right.

Q And you indicated that that occurred in July and August of last year, did you not? Is that true?

A Right. I think it was in August.

Q Do you know when in August, sir?

A No, I don't know the exact date.

[396] Q Well, you were asked on your direct examination if the date of August 26th stood out in your mind and I believe your response was that it did.

A Right.

Q Was it closer to August 26th that date that sticks out in your mind, closer to the beginning of August that occurred?

A Would you repeat that again?

Q The first incident with Mr. Cooley and the two officers, you have indicated that that occurred in August.

A Right.

Q And you have also indicated that August 26th sticks out in your mind.

A Right.

Q Now, did that incident occur closer to August 26th or closer to the first of August, if you remember?

A I think closer to the first.

Q Closer to the first?

A Right.

Q Now, sir, you also described a situation where officers opened Mr. Cooley's cell and jumped on him?

A Yes, sir.

Q What month did that occur in?

A In was in August, too.

Q Now, sir, in relationship to that escort officer [397] incident, did it occur before or after that?

A Before.

Q Before. Now, you also described a situation where Captain Dickinson in the company of another officer threatened Mr. Cooley?

A That is right.

Q Did that occur before or after the officers went into the cell and jumped on Mr. Cooley?

A Before.

Q Before. Did that happen before or after the officers went into Mr. Cooley's cell and jumped on him, that threat?

A Did it happen after?

Q Did it happen before or after the escort officers had an incident with Mr. Cooley?

A It was before.

Q So, it was between—is it safe to say it was between the escort officer incident and the gentlemen going into his cell, is that fair to say?

A Would you repeat that?

Q Well, sir, you have just said that Mr. Dickinson made that threat?

A I have trouble with one of my ears.

Q I'm not trying to confuse you, sir, I'm—

A I just want you to know that I have trouble hearing.

Q Let's back up a little bit.

[398] You just testified that the two escort officers, that incident occurred closer to August 1st than to August 26th, is that correct?

A Right.

Q And you also indicated that the officers who went into Mr. Cooley's cell went into his cell before the escort officer incident?

A No, afterward.

Q All right, sir.

Now, when did this last incident occur, the threat incident?

A I can't remember. That was after the hallway incident.

Q That was after the hallway incident?

A Right.

Q Now, sir, with regard to Mr. Bailey, that is Mr. Drury's client, you indicated that the threat to Mr. Bailey occurred in August, is that correct.

A Right.

Q And you have also indicated that August 26th stands out in your mind, that is true?

A Yes.

Q Did that threat occur closer to August 26th or closer to August 1st?

A Right around the first.

[399] Q Closer to the first than the 26th.

No further questions, Your Honor.

\* \* \*

#### RONALD CLIFTON COOLEY

was called as a witness by and on his own behalf and after having been duly sworn was examined and testified as follows:



## DIRECT EXAMINATION

BY MR. ROBBINS:

Q Mr. Cooley, speaking clearly in a loud voice, would you please state your full name?

A Ronald Clifton Cooley.

Q How old are you, Mr. Cooley?

A 23.

Q Now, Mr. Cooley, directing your attention to July and August of 1976. Where did you live?

A 1901 D Street, Northeast.

Q What is that address commonly known as?

A The new D.C. Jail.

[400] Q Where in the new D.C. Jail did you live?

A Northeast 1.

Q Did you live in any particular cell.

A Cell 63.

Q For the entire time?

A For approximately ten months. I'd say approximately ten months.

Q Would you describe that cell?

A The cell itself. It has got a—I was in a cell with no window. It has bar doors. It is about three feet away from, they call it a bubble. I call it a booth. Officer's booth.

Q How far away?

A Three or four feet.

Q How large was the cell?

A I ain't going to make no estimations. I don't know the width or the length of it.

Q Well, would you say that it was as long from me to you?

A Well, my cell?

Q Yes.

A I'd say it—the cell is about you know, we could say average. It ain't big. I ain't going to make no estimation. I don't know. It could have been 9 by 12. I ain't going to say. I ain't going into that.

[401] Q On an average day, Mr. Cooley, how often would you be allowed out of your cell?

A Me? I was never allowed out of my cell.

Q You never left your cell?

A No.

Q Didn't you go for showers?

A When they feel like giving them to me.

Q Well, about how often would that be?

A Well, they had me on special handling, right. So, when they get an officer—like they says, three officers in there, there would be two in the block at all times and by me being on special handling if they have three officers in the block I might get a shower. But, like Officer Vincent, if he's there, he likes a man—like he will let you out, and says I'm going to stand on the rail and watch while you get a shower, and they ain't going to send anybody up because it is me.

Q How would you get from your cell to the shower?

A My cell is the third cell from the shower.

Q How would you get from your cell to that shower?

A Officer Vincent had an officer in the booth. He come out of the booth. He had an officer in the booth open the cell while he stands there, gets me safe and when I come out to get a shower he walks me to the shower and stands on the steps to make sure I don't come out or go running.

Q How were you dressed as you went to the shower?

[402] A I had—my towel and shower shoes on.

Q Did you ever have handcuffs on?

A I have handcuffs on. If Officer Vincent ain't there—Officer Vincent don't want to go through it. Say, you have to wait until after the count, until after visitors. There's so many, you know, have to schedule other people. He don't want to go through it, so he takes it on liberty. Most of the officers that come in there, they have handcuffs on and still want two or three more officers.

Q Now, Mr. Cooley, you were in Northeast 1 for approximately ten months—

A Yes.

Q —you testified?

Did there come a time when you left Northeast 1?

A Yeah. I left Northeast 1 quite a few times.

Q Did there come a time when you left the jail?

A Yeah. There came a time when I opened the cell and I was—they told me, you know, all depends how you talk about how I left.

Q Right.

A Like I was forced to leave the jail.

Q When did this occur?

A August 26th.

Q Now, in the weeks before that time, did you ever have any confrontation with the guards at—

[403] A Yes.

Q —D.C. Jail?

A Confrontations with the guards. Confrontation with other people, like getting back, you know.

Q Just answer my question, Mr. Cooley.

A Yeah. Yeah.

Q Did you ever have any confrontations with the guards?

A Quite a few of them.

Q Would you describe them and tell when they occurred?

A Right. See, I guess I—like I—okay. I went to court one time. I was over at Superior Court. I came back from court, after court came back about 2:00 o'clock.

Q When was this? Do you recall? Do you remember the date?

A This was about—as a matter of fact it was August 9th, approximately, I went down for the indictment.

Q Continue, please.

A And came back about 2:00, 2:30 o'clock and kept me downstairs until 10:30. When I get ready to ask them was I ready to go up, he said, "Yes," take off my clothes. When I get my clothes off Officer Brown tells me that you take no shit in your cell, and you get out of the cell now. You ready to do what you're going to do? I said, "Look, man, I'm tired." "I don't want to hear this shit." Like I ain't going to do no fighting. I ain't going to let anybody hurt you. So he said, [404] "You're going to fight."

I'm tired, but I ain't going to let him hurt me, so I back up against the bar. I look around. I see no other inmates. Over here, he says; it's going to be me and you. So I said, "Well, yeah, all right."

So, when I turned around six other officers like, Smith, Graves and two other white officers, they tell me—see they got the big plastic flashlight see, because people complain so much about the beating and bruises. They cause too much problems. So they use plastic flashlights so you won't be bruised so much, you know.

So, I fall out to the floor, you know. I get back up. I know I'm going to get whopped, so I just go ahead and let him beat me. So they bring me down, shackling me down the hall. I'm standing there talking, see if my lawyer can't do anything about this and they say, "Man, get down the hall." I got so damned mad I turned around and do like this. So he push me down. So, I go in the cell. The next shift comes on. They come down to my cell. I ask, "Can I go to the hospital?" They say, "Yes, we're going to check on it," but at the same time I asked Captain Dickinson said he's coming up to the cell to see me, but he ain't never come.

Q Were you able to call your lawyer about this?

A We didn't get phone calls.

Q Did you make any complaints to anybody about this?

[405] A I made complaints to Judge Eugene Hamilton over at Superior Court.

Q Did you make any complaints to any prison officials?

A All of them all of the time. Yeah, I—like they don't believe nothing I say.

Q What if anything did you notice that they did about your complaints?

A I—just like I told you. They act like they don't believe nothing I say. They don't believe nothing else. You ain't going to put it on paper.

Q After August the 9th, did anything similar to this occur?

A Well, like I been beat quite a few times. It is hard to go into it. Like man, I've been locked up almost



a year and a half. It is hard to go into. Everytime I think about it I get mad. I don't like talking about it, you know. But it happens quite a few times. You know, like man, I know I'm on trial for escape and all that, man, but I was forced to leave, you know.

Like they say they're going to kill me if I didn't go and I ain't trying to die.

Q When were these statements made?

A These statements made August 26th.

Q What were your feelings after hearing those statements?

A They said—like I was out of my cell. They say you [406] be gone or we're going to kill you. I say, "Man, I ain't escaping." They say, "Man, you're out of your cell." "We don't trust you." "You're going out, just like that."

Q Who said this?

A They said it.

Q Who is "they"?

A They did, The people I'm on trial with.

THE DEFENDANT WALKER: Your Honor, I object to that. That is a violation of my Fifth Amendment Rights against self-incrimination. He, being a codefendant of mine. As a matter of fact, Your Honor, the defendant at this times moves for a mistrial.

THE COURT: Denied.

THE DEFENDANT WALKER: All right.

BY MR. ROBBINS:

Q Who opened up your cell?

A The police opened up my cell.

Q What do you mean by "the police"?

A They the only ones that can open the cell.

Q Who do you mean by "the police"?

A Officers.

Q Who are you referring to? Correctional Officers?

A Yes.

Q What again made you leave your cell?

A They let me out.

[407] Q Had you ever made any attempt prior to this time to leave the jail?

A I ain't never escaped nowhere.

Q And, why not?

A Why not? Because I ain't never wanted to. I was going to like file a suit on them.

Q What made you take this opportunity to leave the jail?

A Like I just told you.

Q Would you state it again?

A They made me leave.

THE DEFENDANT WALKER: Your Honor, we object to that.

BY MR. ROBBINS:

Q Once you left the jail, Mr. Cooley, did you make any attempt to notify anybody in authority to say you were out and did you make any attempt to notify anybody that you were out?

A Yeah.

Q To whom?

A Like I ain't do it per se. But, like when I went home, you know, my people called and I told them that I had, I told them what happened. Why I had done it. They was mad. I told them why I had done it. They understood, but they called and never got in touch with anybody.

Q Did you ever make any attempt to call anybody, yourself?

[408] A I don't know nobody to call. I'm thinking like this here: They don't like me in the jail. Ain't nobody I can call.

Q Why did you not call anybody at the jail?

A For what?

Q Did you feel that there would be any purpose in doing that?

A It wouldn't have been none. They probably came and got me, and then make me try to run and they shoot me in half when they come and get me.

Q So you feared for your life. You could not call for that reason?

A That is right.

Q Did you ever leave Washington, D.C., after you left the jail?

A No.

MR. SCHAARS: Objection, Your Honor. It is not relevant to anything. It doesn't matter if he went to Florida.

THE COURT: Overruled.

BY MR. ROBBINS:

Q Did you ever leave Washington, D.C.?

A No.

MR. ROBBINS: I have no further questions.

THE COURT: Mr. Drury?

[409] CROSS-EXAMINATION

BY THE DEFENDANT WALKER:

Q Your name is Ronald Cooley?

A Yeah.

Q You were housed at the D.C. detention facility, 1901 D Street, Southeast between July 11 and August 26th?

A Yes.

Q Do you know the codefendant, Ralph Walker-El who is now questioning you?

A By being in the same block.

Q Mr. Cooley, you indicated to your attorney that you were forced to leave, that you were in fear of your life, is that right?

A Right.

THE DEFENDANT WALKER: No further questions, Your Honor.

THE COURT: Mr. Drury.

CROSS-EXAMINATION

BY MR. DRURY:

Q Mr. Cooley, I don't have to identify myself. You know who I am, don't you?

A Right.

Q Mr. Cooley, when did you get on dead lock?

A I ain't never got out.

Q When did you start?

[410] A When I started get in on dead lock?

Q Yes.

A Well, I got on dead lock—

Q The year of 1976, let's limit it to that.

A April 22nd.

Q Did there come a point in time in the summer, sometime in June that you learned that there was an inmate on the Northeast 1 sector by the name of Clifford Bailey?

A Yes, sir.

Q Was he known as Sonny?

A I hear people call him Sonny.

Q What do you call him?

A Who? Me? I call him Bailey.

Q What cellblock were you in?

A Northeast 1.

Q Do you remember what cell you were in?

A 63.

Q What cell was he in?

A I don't know his cell. It was on the same floor. I'd say—I think between cell 68 or 67.

Q Did you know him prior to the escape?

A Nope.

Q Did you escape from the jail at the same time, within five or ten minutes of him?

A Yep.

[411] Q Now, were you aware of any types of threats that were issued against Mr. Bailey?

A I was aware of them, but I ain't, you know, I was aware of them, yes.

Q How did you become aware of them?

A Like the officers in the jail, the officers being on Northeast 1, they feel as though everybody in one block are friends and have some type of semblance from the same type of background or neighborhood. They say we all know each other. This is how they then go forth to tell me—like, really, I'm going to put it to you like this: Me and the officers are fighting, so they tell me, they say, "Yeah, you tell your buddy, Mr. Bailey that—since he likes going to court and testifying for everybody,



this, that and the other, and he likes Mr. Brad King so much, you tell him we going to kill him and see if Brad King can't pay for that."

Q Who is Brad King?

A I don't know him.

Q In what context was the name Brad King used?

A Like—it seemed like to me like they despised both of them. Like they done something to one of the officers or the people. I don't know for what reason.

Q Was Brad King a defendant in a case?

A In this case?

Q In another case.

[412] A I don't know.

Q Now, did there come a point in time that you learned my client had filed a suit against a number of the jail guards?

A It was quite a few suits and petitions.

Q I'm merely asking you whether you were aware, during the summer of 1976 my client filed a suit against the D.C. Jail guards?

A Yeah, I was aware.

Q How did you become aware of it?

A Police told me.

Q By the "police" you mean the Metropolitan Police or the jail guards?

A The jail guards.

Q Which ones?

A Graves told me. Smith told me, and then Brown told me.

Q Do you know what the underlying incident that caused this suit was?

A Like I said, I seemed to get a beat a few times. I seen him get beat, a few times. He be talking to a couple of dudes, you know, tell him hi, I ain't going to argue with them. I will file on them. So, I guess that is what caused it. I ain't going to make no statement because I don't know.

Q Did there come a time—strike that.

You have heard testimony from Lester Robinson here, [413] today, as he read through the log book that there were fires during July and that there were also incidents during August. Is that correct?

A Right.

Q And, could you describe in your own words what was occurring in mid-August that caused these entries in this book on August 16, 17 and 18?

A Well, started off on the 16th. I remember that real good.

Now, it was hot, you know, everybody else is going off to rec. They tell us we can't go to rec. They go outside. We're locked up. We don't go outside or nothing.

So, you know, we don't get a chance to be out. We come out, one at a time like I'm on special handling so I got to be handcuffed, everything when I come out. See, I don't get no rec, see. I have been in the jail ever since it first opened. Everbody gets rec. The paper states that everybody is supposed to get rec. So, the dudes, you know, the inmates has got—

Q Just slow down. Everyone is supposed to get recreation, is that right?

A Right. Right.

Q And the people on special handling, do they get special rec?

A I said everyone is supposed to get recreation.

[414] Q So, we're talking about August. We're talking about the fact that people are not allowed out to get recreation. Please continue with your statement.

A Okay. So like the dudes in the block, you know, they get to squawking. We want to see the Captain. They want rec. We want to be out of the cell. We want this. We want that. You know. You got three officers. I I don't know what they be present, or what you call it, they call, "your dead lock." 'Lay down.' "You don't get no rec." 'If you keep on you're going to get some rec.'

See, I know what they're talking about so I don't want to be saying nothing. I tell you like this here: They be burning—the inmates—they had a legitimate reason to burn. You burn when you stay there 24 hours a day. You get a shower if the officer feels you get to get a shower. If they say you don't get none, you don't get one. You can report to anybody you want.

Q When was the last time you had a shower?

A Right now I get showers. I'm in Lorton Reformatory. When I was up at the jail they took my visitors. They wouldn't let my wife, my mother, my

lawyer come over there. See, I got to talk to my lawyer and I got to be handcuffed and sit with the officer standing behind me. When I talk to my lawyer I can't even talk about my case.

Q Were you getting regular showers in mid-August before [415] August 26th?

MR. SCHAARS: Objection, Your Honor. Regular showers have nothing to do with this case.

THE COURT: I will permit the question.

THE WITNESS: No.

BY MR. DRURY:

Q How many showers were you getting a week, sir?

A About—I'd say it might—like usually I am— well, I'm going to tell you about me. Personally, I only got showers, I might get them twice a week if a visitor be on.

Q Okay. Now my question is concerning these fires. You stated that fires were started. From previous testimony you have heard that they were started with sheets and pillowcases and towels. Is that correct?

A Yes, that is correct.

Q How long would they be allowed to burn?

A Like I seen a fire burn, I seen a fire burn 24 hours.

I tell you I seen it, because I know. I participated, but I seen it.

Q Would the officers attempt to put them out?

A No. You got an officer. He comes down there. You can't put no fire out when you got people like—you put a fire out—he comes down with a water pitcher, right. He just put enough out and that the thing ain't no bigger than this. It holds water. Man, what do they do. They put the [416] fire out. Okay. They put—say if it is a blanket burning, they put the blanket out. They know the blanket's going to stink up the block. There's no ventilation, but it can't go in the officers booth, but if it is sheets, paper, pillowcases or something of that nature, they let it burn. Same thing like this here. It is going to burn. We're back here. We can't feel it. When it stops burning then the smoke is on you all. See, I have

smoke in my nose, in my face, in my clothes, you know.

Q Have you ever seen any inmates taken out for smoke inhalation?

A I have seen quite a few.

Q During this three day period in August did you see any inmates being taken out?

A Nope.

Q Were there any inmates from your knowledge who were sick because of the smoke?

A Quite a few.

Q Can you explain this occurrence that happened on August 16, 1976 when the cleaning crew refused to come into the cellblock?

A August 16th Officer Bimbo, he bring about six inmates in. The dorm all messed up. You have trash, fire, you got food. Well I mean like food—not like a piece of bread. You got food stacked up like this here. You got fires, rags [417] all over the bars where they have been burned. You got, you know feces, human feces all over the floor, piss, everything on the floor.

So, the people come in. They say, "Man, I ain't cleaning it up." 'It ain't my job.' Bimbo say, "You go in." They say, "Man, I ain't going in there." 'I ain't cleaning it up.' 'Take me off detail.'

Q These are inmates who have some type of—

A They got paid for working and all of that.

Q And they refused to go in?

A Right.

MR. DRURY: I have no further questions, Your Honor.

THE COURT: Mr. Walker, have you questioned the witness?

THE DEFENDANT WALKER: Yes.

THE COURT: Mr. Schaars.

## CROSS-EXAMINATION

BY MR. SCHAARS:

Q Mr. Cooley, do you recall being apprehended after your escape?

A Yeah, I recall.



Q Do you recall what day that was?

A I think it was the 23rd of September.

Q How about September 27th, would that be more accurate?

A I think it was the 23rd of September.

[418] Q Did you surrender yourself at that time?

A No.

Q Did you call the FBI and invite them over to your apartment so you could be arrested?

A Nope.

Q Do you know how to use a telephone?

A Do I know how to?

Q Yes, sir.

A I'm not going to answer that because it is very silly.

Q Do you know how to use a telephone?

A I'm not going to answer that question. It makes me look like a fool and you look like a fool for asking it. But I know how to use it.

Q Do you know what the numbers 911 mean on a telephone?

A No, I don't.

Q Do you know how to call the police?

A No.

Q Do you know of the existence of the Metropolitan Police force?

A Yes.

Q Have you ever been arrested by them?

A Yeah, I been arrested.

Q Did you know of the existence of the Federal Bureau of Investigation prior to your arrest?

[419] A I know they exist.

Q And that is who arrested you, is that true?

A The warrant squad arrested me.

Q Were there any FBI agents there?

A I don't know. They all had suits on.

Q You saw Agent Colvert come in and testify?

A I don't know him.

Q Never saw him before in your life?

A I never saw him before.

Q He wasn't present when you were arrested?

A I never saw him before.

Q Who forced you to leave jail?

A I'm not going to do that no more. You see, you ain't going to get—

Q Who forced you to leave the jail?

A I'm not going to name them no more.

THE DEFENDANT WALKER: Objection, Your Honor. He said he wasn't going to do it.

BY MR. SCHAARS:

Q Was it Mr. Bailey?

A (No response.)

MR. SCHAARS: I don't believe the witness has the option at this point in declining to name anybody.

THE COURT: You may answer the question.

THE WITNESS: I'm not going to name them. That is [420] my answer.

THE COURT: All right. Ask your next question.

MR. SCHAARS: I would ask to approach the bench.

THE COURT: I can take action. Go ahead.

BY MR. SCHAARS:

Q Now, when you were forced to leave the jail how many people threatened you?

A Numerous of people.

Q Was it more than two?

A Numerous of people.

Q Was it more than two?

A Numerous of people.

Q Was it more than two?

A Numerous of people.

Q Mr. Bailey, [sic] would you answer the question?

A I am answering.

MR. ROBBINS: Objection, Your Honor. He has answered the question.

THE COURT: I think that is sufficient. Ask your next question.

BY MR. SCHAARS:

Q Was it more than three?

A Numerous of people.

MR. SCHAARS: Your Honor, I respectfully suggest that is not an answer. Mr. Cooley can sit here and play games all [421] day.

THE WITNESS: Well, I—

THE COURT: I understand.

MR. ROBBINS: I object to that characterization. Mr. Schaars is playing games as well with Mr. Cooley.

THE COURT: Well, gentlemen, we will have no colloquy between counsel.

BY MR. SCHAARS:

Q Mr. Cooley, were there any correctional officers in the bubble at the time that you escaped?

A Yep.

Q Did you shout out to them that you were being threatened?

A They was in the bubble.

Q Did you wave to them at all?

A They was in the bubble.

Q Could your cell be seen from the bubble?

A Yes.

Q Did you wave to them at all?

A I wasn't in my cell.

Q Did there come a time that you left your cell that morning?

A They opened my door.

Q When you walked out that door had you been threatened before you walked out the door?

[422] A I already answered that.

Q I don't recall that you did, Mr. Cooley.

A I answered that once. You asked me that earlier. I answered it. I know what I said. I answered it.

Q Were you threatened before?

A I told you I was threatened and I answered the question.

Q Mr. Cooley, all I'm asking is: Were you threatened?

A You asked a question and like I say you ain't got to keep on asking. I'm not going to answer it no more. You're playing games.

MR. SCHAARS: I would ask that the witness—

THE WITNESS: I'm trying to answer your questions. My stomach hurts and I don't feel good. You keep asking the same questions over and over again.

THE COURT: This is a question that hasn't been asked before. You haven't answered it.

Ask the question again.

BY MR. SCHAARS:

Q Were you threatened before you left the cell?

A Was I threatened before I left the cell? Wasn't nobody out there.

Q Yes, sir. So, it was after you left the cell that you were threatened?

A Right.

[423] Q At the time you were threatened were you out of a cell or were you in another cell?

A What's that mean? Was I out of a cell into another cell?

Q You have indicated that you weren't in your—that when you left your cell you hadn't been threatened, is that correct?

A Right.

Q Now, were you threatened while you were in the open area, the hallway or were you in another cell when you were threatened?

A I was in the hallway.

Q And from where you were in the hallway could you be seen from the bubble?

A If the officers was looking.

Q But there was a line of sight from the bubble?

A But they wasn't looking.

Q That isn't what I asked you.

A But they wasn't looking. I'm telling you what you asked. You asked could I be seen. I told you they wasn't looking.

Q If they had been looking could they have seen you?

A Yeah.



Q Now, sir, when you left the jail did you stay in the company of the people who you left with or who left about the [424] same time?

A I was by myself.

Q You didn't stay with Mr. Bailey or Mr. Walker?

A I was by myself.

Q Were the people who threatened you with you as you left the jail?

A I was by myself.

Q You testified, Mr. Cooley, that you didn't really attempt to try to escape before this time at all because you were going to sue, is that correct?

A That is right.

Q So, are you testifying today that it was the threats alone that made you escape?

A All of the threats. In general the treatment and the threats.

Q Well, Mr. Cooley, if you said it was the threats from your fellow inmates that made you leave on that particular day, if I said that, would the be accurate?

A I answered that once.

Q Who left with you?

A I just told you now. I'm by myself.

Q Do you know who left at about the same time?

A No, I don't.

Q Do you know whether or not the people who threatened you left?

[425] A No, I don't.

Q In August of 1976, when this pile of rubbish was in the jail, do you know how it got there?

A Inmates put it there.

Q The food too?

A Everything.

Q Everything was put there by the inmates?

A Fires, food.

MR. SCHAARS: I have no further questions, Your Honor.

THE COURT: Mr. Robbins?

## REDIRECT EXAMINATION

BY MR. ROBBINS:

Q Just to clarify once again, Mr. Cooley, why didn't you call the police or the jail after you left the jail?

A Well, I told you before. I was afraid.

Q Who were you afraid of?

A I was afraid that one, if I called them I might get hurt. Then I was afraid again if I called them I still might get hurt. See what I'm saying?

Q Yes. But who were you afraid of?

A Mostly I was afraid of the prison guards. I know they don't like me.

Q And what—if you called them what did you feel would happen?

[426] A I felt as though if I called them, said come get me. I felt as though they might come, but I might not go back to the jail.

Q Where did you think you might go?

A See, man, like they threatened to kill me. They even told my sister. They come to see somebody else and they told me, the police—

MR. SCHAARS: Objection, Your Honor, this is hearsay.

THE COURT: Yes. Sustained.

THE WITNESS: Well, I think they would have done something to me like they said they was going to do something to me anyway.

BY MR. ROBBINS:

Q Why did you leave your cell on August the 26th?

A They let me out.

Q Why did you leave the jail?

A I was made to leave.

Q By whom?

A I already answered that.

Q Would you answer it once again to clarify it for the Court?

A I already answered that. It is on the record.

MR. ROBBINS: I have nothing further, Your Honor.

THE COURT: All right.

MR. DRURY: I have no questions, Your Honor.

\* \* \*

[428] DR. SAMUEL L. BULLOCK

was called as a witness by and on behalf of the defendant Bailey and after having been duly sworn was examined and testified as follows:

# DIRECT EXAMINATION

BY MR. DRURY:

Q Doctor, my name is John Drury and I represent Clifton Bailey. Could you please give us your full name?

A Samuel L. Bullock.

Q What is your occupation, sir?

A Physician.

Q Where are you employed?

A The Department of Corrections.

Q How long have you been a doctor?

A How long have I been, what?

Q A doctor, sir.

A Oh, 37 years.

Q That is all?

A That is all.

MR. DRURY: Your Honor, I will stipulate that Dr. Bullock is an expert on the treatment of wounds and injuries, and that he is a qualified physician.

MR. SCHAARS: Your Honor, we would of course stipulate to the same thing. I would ask that each of these gentlemen [429] do as well.

THE DEFENDANT WALKER: What is the question, Your Honor?

THE COURT: Will you gentlemen stipulate that Dr. Bullock is qualified to give a medical opinion?

THE DEFENDANT WALKER: Yes, I have no objection.

MR. ROBBINS: No objection, Your Honor.

THE COURT: All right, you may proceed.

\* \* \*

[437]

# CROSS-EXAMINATION

BY THE DEFENDANT WALKER:

Q Mr. Bullock, you are the chief medical officer for the D.C. Detention Center?

A Chief medical officer.

Q Chief medical officer?

A Yes.

Q Do you recognize this folder?

A No. Yes, I recognize the stuff in there.

Q What is that?

A This is our medical jacket. We keep medical jackets on our residents who complain of being ill.

Q All right.

Your Honor, I'd like to introduce this into evidence.

MR. SCHAARS: Your Honor, we have no objection to the pertinent points of that jacket which are Mr. Walker's medical [438] record from the District of Columbia Department of Corrections being introduced in this case.

THE COURT: Would you like to look at it?

MR. SCHAARS: I have seen Mr. Walker's, although I haven't had the opportunity to see Mr. Bailey's.

THE COURT: All right. It will be received.

THE DEPUTY CLERK: Defendant Walker's Number 2 received in evidence.

(Whereupon, Defendant Walker's Exhibit Number 2 was received in evidence.)

BY THE DEFENDANT WALKER:

Q Dr. Bullock, first I'd like to direct your attention to this particular document which is entitled, "History;" would you explain to the Court what this is, please?

A This is a history that is given by the patient upon interrogation.

Q And, according to this document, did I complain of any illnesses?

A You have no complaint of an illness in there, no.

Q What is that?

A It is a history. You had had an epileptic seizure.



Q All right. And, according to these records was I consequently given any type of medication for those epileptic seizures?

[439] A You were given medication on a trial basis.

Q On a trial basis. How long was this medication given on a trial basis?

A Well, I will look at what we have here. This whole thing should not exceed 20 days.

Q According to the records here, did it exceed 20 days?

A I have no way of determining at this point.

Q What type of medication was I being given?

A The medication ordered was Dilantin and Phenobarbital.

Q Would you repeat that, Doctor?

A Dilantin and Phenobarbital.

Q What is the purpose, or just what does Dilantin—what is Dilantin-Phenobarbital used for?

A It is used predominantly for epileptic seizures.

Q Now, you said that I was being given Dilantin and Phenobarbital on a trial basis?

A Right.

Q Now, on this trial basis—how is this trial basis conducted? Was I supposed to have taken medication for a certain period and then be rechecked?

A Exactly right.

Q According to these records was I rechecked?

A I can't see whether it was rechecked or not. I haven't looked at it.

Q Would you look at it, please.

[440] A All right.

THE COURT: Take your time, Doctor, and examine the records.

THE WITNESS: All right.

We're talking about December 15, '76, now.

THE COURT: Of '76?

THE WITNESS: 1976.

THE DEFENDANT WALKER: I'm speaking of June, when I first entered the D.C. Correction Department, June 26th.

THE WITNESS: All right. He was ordered Dilantin-Phenobarbital on June 13th. There is no cutoff date on that, on that particular—

# BY THE DEFENDANT:

Q Let me ask you something, Dr. Bullock. What are these dates?

A These are the dates that he apparently received the medicine.

Q What is the first date on here that I received the medicine?

A Received June 15th.

Q What is the last date on there that I received it?

A 8-27.

Q So, that is much more than 20 days, from June 6th until—

A August the 8. We were talking about December, '76, [441] counselor.

Q That is what we were talking about at first. From what you have seen of the records now, would you say that I was being given Phenobarbital or Dilantin or whatever it was, on a regular basis or on a trial basis there?

A This still is a trial basis. We have no evidence that Mr. Walker had any—was even an epileptic.

Q So, in other words I would have been given the medication permanently, according to what the records say, and you would have never have known since I was never being rechecked, is that true?

A No, not necessarily. You went in on the 13th of July.

Q I was what?

A You were in on the 13th of July.

Q I was in?

A In.

Q What do you mean by "in"?

A You came into the infirmary. You were on sick bay that day.

Q For what?

A You had gotten injured in a basketball game.

Q Are you talking about the epileptic problem?

A I don't have any other information on here, more than what we just read.

Q All right, Doctor. What I'm trying to get at is this: [442] You say that I was being given Dilantin and Phenobarbital. I was supposed to have been given this on a 20-day trial basis.

A No. You're wrong. I said that when we were talking about December of 1976. We are back to July now.

Q Oh, so in other words in December it was a 20-day trial basis?

A Exactly.

Q What is it now?

A There is no evidence that this is in the record here.

Q In other words, the person can come into the D.C. detention facility and give a personal report of epileptic, of some type of illness he has, and receive medication indefinitely?

A No, that is not right.

Q But your records indicate that I received medication from the time I entered the jail until the time the alleged escape took place.

If the medication is on a trial basis, what type of criterion is set up for the trial basis to end for an inmate, to be rechecked, as far as the medication that he is taking if you're not sure that there is nothing wrong?

A Maybe you escaped before your trial basis was up.

Q I'm asking you how long is the normal trial basis?

A There is no rule of thumb. It depends upon the [443] doctor examining things.

Q You confuse me, Doctor Bullock. In other words, you're saying that there is no specified time limit for a person to be on a trial basis as far as taking medication is concerned?

A Except what the physician thinks about it.

Q In other words—

A He might determine that it is five days. He might determine that it is six months. It depends on the doctor.

Q In other words, I could take the medication six months before being rechecked?

A I say it depends on the physician.

Q But I'm saying, would it be possible for me to take that medication for six months without being rechecked?

A Anything is possible.

Q According to the practices.

A According to the practices, I thought I answered that. It depends upon the individual physician. We treat people one at a time.

Q So, in other words there is no criterion set up?

A I said there is no rule of thumb.

Q So, in other words, you're telling me that I was in fact taking medication for three or four months for an illness that had not been diagnosed?

A Wait a minute. If you have got all of this you had [444] here—you only had it for how many days, one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen days.

Q Aren't there other medical records for when a person is receiving that Dilantin, a person is assigned the—

A I don't have that record.

Q I understand that you don't have it.

A This is it.

Q Is there another record of me receiving Dilantin?

A When is this now? You're not interested in that one at all.

Q Don't tell me what I'm not interested in.

A It is November 18, 1977.

Q Hold up, Doctor. Let me regroup myself. May I indulge the Court for a minute, please?

THE COURT: Yes, the Court will indulge you.

MR. SCHAARS: Your Honor, may I see Mr. Bailey's medical record?

BY THE DEFENDANT WALKER:

Q Dr. Bullock, considering the erratic method that I was given medication, would you consider this a normal practice the way that I was given medication here or would you consider that negligence on the part of your doctorial staff there?

A I consider the way it is recorded here it was given in good form.

[445] Q All right.

What did you say about you do it with some for thumbs down or as far as the method you use for giving out medication?

A I didn't mention anything about thumbs at all.



Q I thought you did.

A I'm sorry, you're incorrecction.

Q Did you on occasion, to your recollection, or did any of your staff, treat any inmates for smoke inhalation during the summer of 1976?

A I don't remember.

Q To your recollection you didn't?

A I don't remember, I said.

Q That is to your recollection. All right, Your Honor, no further questions at this time.

THE COURT: Mr. Schaars?

MR. SCHAARS: I wonder if I might have a moment with Mr. Bailey's medical record?

THE COURT: Yes.

#### CROSS-EXAMINATION

BY MR. SCHAARS:

\* \* \*

[454] Q Doctor, I'd like to take you through the same sort of review of Mr. Walker's file, if we might, sir.

Again, we are concerned primarily with the period July and August of 1976.

MR. DRURY: Mr. Schaars, may I look at this?

MR. SCHAARS: It is up to the Court.

THE COURT: It is in evidence.

MR. SCHAARS: Your Honor, if this might be marked as subpart of Defendant Walker's Exhibit 2, perhaps 2-A.

THE DEPUTY CLERK: Defendant Walker's 2-A marked for identification and received in evidence.

[455] (Whereupon, Defendant Walker's Exhibit Number 2-A was marked for identification and received in evidence.)

BY MR. SCHAARS:

Q Now, sir, could you identify what has been marked as Defendant Walker's Exhibit 2-A?

A 2-A, the Dilantin-Phenobarbital tablet, four times a day.

Q How many times, sir, was that medication prescribed in July and August or received in July and August?

A Twelve times according to this record, here.

Q Does that record indicate receipt of medication or the sending of medication to the cellblock or what?

A That record reflects he received the medication.

Q I see. Now, sir, I'm going to direct your attention to the card below Defendant Walker's Exhibit 2-A. What medication is indicated on that?

A That is Dilantin-Phenobarital continued.

Q Continued beyond what, sir?

A From this date here.

\* \* \*

[456] Q Now, it indicates on here—what is this, sir?

A Take Dilantin for seizures.

Q Now, why would that be written on there?

A This was taken by either another inmate or an M.T.A., not a doctor.

Q Is the information that is contained on a history form such as this, based upon what the inmate tells the medical staff?

A That is right.

Q So, if the—for example in this case, it indicates [457] age of 27, is that based upon the inmate telling the hospital that?

A That is right.

Q It also indicates that there is no drug problem at all with this particular individual, is that correct?

A Right.

Q That is based upon what the inmate tells you?

A That is right.

Q When it says, "Take Dilantin for seizures," would the inmate have told whoever filled this out that that is the medication he received?

A I assume he would, yes.

Q By, "seizures," are you able to determine whether this is any particular type of seizure?

A No, I'm not.

Q Just, "seizure". That would have been what the inmate told the member who filled this form out?

A Right.

Q Now, sir,—

A June 13th.

Q 13th, what is this, sir?

A This is the—when the inmate is seen by the doctor.

Q All right. Does this indicate a doctor's evaluation of that patient's condition?

A Exactly, right.

[458] Q On June 13th what evaluation, if any, was made?

A The doctor who saw him at this time, according to the log, maintains history, he ordered Dilantin-Phenobarbital, three times a day.

Q Is that something you indicated earlier, something to be given to someone who stated a history of epileptic seizures?

A It might.

Q Is there any reflection on this particular form of a diagnosis of epilepsy?

A Yes, he said, "Possible epileptic, history of narcotic conviction."

Q But, there is a possible diagnosis of epilepsy. Is that why this is given, based upon your interpretation of the record?

A Yes.

Q The dosage indicated one-quarter gram. You talked earlier about a trial basis for medication.

A Right.

Q If one is actually diagnosed positively as an epileptic, is the same dosage given?

A Well, it may or it may be more than that. It might be even less, really.

Q It depends upon the extent of the illness and the severity of the illness, I take it?

[459] A And on the total picture.

Q And when one prescribes something on a trial basis, is the attempt to hit a plain so if there is epilepsy it can be controlled by the—

A Exactly.

Q That is the reason for giving a trial medication, sir?

A It is hard for us to keep track of them unless we do that.

\* \* \*

[467]

CLIFFORD BAILEY

was called as a witness and on his own behalf and after having been duly sworn was examined and testified as follows:

# DIRECT EXAMINATION

BY MR. DRURY:

Q What is your name, sir?

A Clifford Bailey.

Q How old are you, sir?

A 35.

Q Where do you reside at present?

A 1901 D Street, Southeast.

Q When were you first brought in the year of 1976 to the new jail?

A I believe it was in June.

Q The early part or latter part?

A Early part.

Q Where were you brought from?

A Leavenworth, Kansas.

Q Why were you brought here?

A On a writ to testify in the Brad King case.

Q Where was the Brad King case pending?

A In the United States Superior Court.

Q That would be for the District of Columbia, across the street?

A For the District of Columbia, yes.

[468] Q Who requested your presence here?

A Brad King's attorney.

Q Do you know his name?

A No, I don't. I don't remember.

Q Did you give testimony?

A Yes, I did.

Q What charge was Brad King charged with?

A First degree murder.

MR. SCHAARS: Objection, Your Honor. It is irrelevant.

THE COURT: Yes, it is irrelevant.



BY MR. DRURY:

Q When was that testimony given?

A In July. I believe, I'm not sure, I can't say for sure.

Q Early part or late part, sir?

A I can't even be sure if it was July.

Q Were you ever approached by anyone at the D.C. Jail of the staff concerning that testimony?

A Yes, I was.

Q I'm not talking about inmates. I'm talking about staff people, authorities.

A Yes, I was.

Q Did anyone ever state to you that they knew that you came here to testify in the Brad King case?

A Yes, they had.

[469] Q Who were these people who talked to you about your testimony in the Brad King case?

A Major Long, Officer Webb, Captain Dickinson.

Q What did they say to you?

A Major Long—he threatened my life, along with Officer Webb and Captain Dickinson, mentioned the same thing, concerning that if I was to testify in this case that I would never leave the jail alive.

So, I asked what did he mean. He said, "He'd leave me hanging like the guy that was left hanging in the Brad King case," and this guy was killed.

Q After your testimony in the Brad King case, from your knowledge, was there—how much time elapsed between that date, this is going to be an approximation, and the time that you—of August 26th? How much time elapsed between your testimony, if you can recall, and the time of August 26th?

A I can't recall exactly.

Q Would it be weeks or months?

A I couldn't be precise.

Q Was there ever any attempt by the authorities to move you back to your institution, Leavenworth?

A No, there wasn't.

Q Did you ever make any request to go back to your institution, Leavenworth?

A Several occasions.

[470] Q To whom?

A To Mr. Robertson.

Q Who is that? Mr. Lester Robinson?

A Mr. Lester Robinson.

Q He testified earlier today?

A Yes. I think after my testimony, it might have been about six weeks. I'm not positive, but you could get the record and it would show.

Q When you came to D.C. Jail, the new D.C. Jail, were you placed immediately in dead lock or Northeast 1?

A No, I wasn't.

Q Where were you placed?

A Southeast 3.

Q And, is Southeast 3 less secure?

A Yes, Southeast 3 is the unit where you have recreation permitted, to make phone calls, permitted to shower whenever you choose, permitted to watch television and listen to the radio.

Q Are you permitted visits?

A Go to the commissary and permitted social visits. You have all of your privileges on Southeast 3.

Q What other privileges would you have on Southeast 3, sir?

A No, no. It wasn't Southeast 3. It was Northeast 3. Northeast 3.

[471] Q Northeast 3?

A Right.

Q What other privileges would you have on Northeast 3?

A You'd have the privilege of going to visitors hall by yourself, with just a pass.

Q Would you be shackled?

A No. No shackles on or nothing.

Q Did there come a time that while you were on Northeast 3 that you received some type of an assignment whereby you could work and receive money?

A Oh, yes. I wasn't in the jail no more than—I couldn't be precise. Now, I don't think it was no more than a week before I was placed on the kitchen detail and I moved to Northeast 2 in the kitchen cell unit and I used to work down in the kitchen. I received privileges

there, I received visitors and I received, I think it was five visits a week instead of four, because by me working in the kitchen you're permitted more visits and the visitors stayed for an hour.

Q Were you paid any money?

A At that time they was talking about having some money.

Q Was anyone on the culinary detail paid money at that time?

A As far as I know, there wasn't

Q Are they now paid money?

A I couldn't say for sure.

[472] Q Did there come a time that you were taken off of this culinary detail or kitchen detail?

A Yes, there was.

Q Who informed you that you were taken off?

A Captain Dickinson.

Q Did he tell you why?

A After he got into my cell he came to my cell with several other officers.

Q This is Northeast 2?

A Northeast 2, the detail unit for culinary men and laundry men and other detail men that work around in the jail.

Q Okay. Now, I don't mean to interrupt you, but do I understand that Northeast 2 is the section of the northeast building that contains the help that does work around?

A Yes. Yes.

Q Is this contained right above the floor that we have referred to so often in this trial as Northeast 1?

A Yes, it is.

Q And I interrupted you by asking that question. Captain Dickinson came to your section and asked you a question or told you something?

A He came to my section, which is Northeast 2 with several officers and called me out, out of my cell and told me to pack my property. I asked him, "What for?" He said, "We're moving you." I said, "What you moving

me, for, man?" I said, [473] "I don't have no disciplinary report." He said, "Get your stuff we're moving you." So, he took me to Northeast 1 and placed me on dead lock. And he explained to me after the officers walked away, after I was placed in my cell, the officers walked away and he explained to me—he said, "I'm just letting you know this is the example of what you'll be getting if you testify in the Brad King case." 'Now, this is just to let you know what I can do.' 'You know now I'm not going to show you what I can really do until after I see what you do on the stand, if you take it.'

Q Now, was this action taken before your testimony in the Brad King case?

A Yes, it was.

Q How soon thereafter did you testify in the Brad King case?

A I can't recall.

Q You can't recall, sir?

A You know, like I can't say. I couldn't be precise.

Q Okay. Let me proceed now. After you were removed from Northeast 2, removed from your job, you were placed in Northeast 1. Were you ever informed, officially by a procedure that had been set up with all of the disciplinary procedure, what had occurred?

A Oh, yes. They called me down to the disciplinary board sometime afterward and explained to me that a letter had [474] been written that stated that I was supposed to have been going to escape. So, I requested that I be given a lawyer. You know, to defend myself, given a lawyer to help defend this charge that they were placing against me. They told me that I didn't have a right to receive a lawyer. It was a simple case. They wasn't going to give me a lawyer. If I had a lawyer myself and I explained to them I didn't have a lawyer, would they give me enough time to obtain a lawyer. They said, "We got this report that you're supposed to be going to escape from the jail." "This is the reason we placed you on dead lock."

I said, "Well, would you investigate it"? 'All I'm asking you to do is just investigate it.' 'Appoint me a lawyer.'



They searched me. They searched my cell. They didn't find any instruments of a crime to show that I would escape. I didn't have any money. I didn't have any tools or anything, no hammers or anything.

Q Okay. Now, let me ask you this question: You had come from Leavenworth?

A Right.

Q How long prior to this date in the year of 1976 did you have any cause to have a lawyer in the District of Columbia either appointed by the Court or retained by you?

A No.

Q Did you know any lawyer?

[475] A No, I didn't.

Q Did you ever talk to the lawyer in the Brad King case before this happened?

A No, I didn't.

Q Was there a finding made at that disciplinary board hearing?

A No. They told me that they would investigate the situation concerning the alleged, supposed to have been escape. I'm still waiting on that investigation to clear up.

Q While they were investigating it were you transferred back to your work detail?

A I remained on dead lock.

Q Okay. After that, did there come a point in time that some fighting incident occurred?

A Yes. Now, this incident I remember in specific, because it was the day I was coming from court after testifying in the Brad King case, or it was the day I—one of the days I went up to court to testify or even was interviewed by Brad King's lawyer. I can't be precise whether it was to talk to his lawyer or to testify in the case, but I remember coming back and coming back one of the officers—I don't know, I'm not going to say that he put this convict up to hit me—

Q Tell us what happened.

A We was walking up the hall. We had left the R. and D. and was going back to the cell. We was going back up to Northeast [476] 1. This officer—I mean this convict

hit me in my face, so I hit him back, and this Officer Graves, he ran up and started beating me with one of the slapjacks.

Q What is a slapjack, describe it for the jury?

A It is a little black piece of leather with some steel inside of it, I believe, I don't know what is inside of it. They beat you with it.

Q Okay.

A They put some kind of—they put it on their hand and hit you with it. So, this officer started hitting me. I hit him back. The officer, Officer Graves ran up, started beating me with his fist. He beat me down to the ground. Carl Dickson was being escorted with me. He persuaded the officers to stop them from beating me. He explained to them he'd kill me if he continued beating me in the head. I was on the ground. I just got up, looked at them and didn't say anything else.

Q Now, did there come a time that because of this incident you were brought before another disciplinary board?

A Yes, they took me before a disciplinary board and said that I was fighting with another inmate. So, I tried to explain that the inmate hit me and I hit him back, and I explained what Officer Graves had done to me. You know, I explained that. I explained the situation to Captain Dickinson, told him I wanted to call the lawyer, wanted the matter to be [477] investigated. He took me to my cell and told me he would look into the matter.

Q Do you remember a fire occurring on June 26, 1976 where a Lieutenant W. R. Johnson, supervisor of the third shift was present?

A Now, I'm not going to say that date, because I couldn't be sure, but I will say this: I remember Lieutenant Johnson was present when Officer R. Brown hit me in my head with a flashlight and threatened to kill me and I asked him—I explained to him that this happened. See, he wasn't present when this took place.

Q Okay.

A He came up as I was getting up off of the floor, like. The cell unit—like once you go to the door, if someone is coming down the hall they can't see you inside of

the doorway, so I just stepped inside the unit and this officer hit me from behind with a flashlight, knocked me down. As soon as I got up, you know, I went to the booth to explain to the officers in the booth and Lieutenant Johnson was there.

Q Okay. Now, you have testified to two incidents of fighting, is that correct?

A I don't call that a fight.

Q Now, you referred to the incident where Officer R. Graves and you had an altercation and that is one incident?

A Officer Graves assaulted me.

[478] Q Well, an altercation, is a fight or argument. You have also referred to a fight that Officer Johnson was present, and that Officer Brown and you got into a tussle. Now, these are two separate incidents, is that right?

THE COURT: Let's correct the record on that. That was your question. He said Lieutenant Johnson was not present.

MR. DRURY: I believe, Your Honor, if I might clarify.

BY MR. DRURY:

Q Did there come a point in time that Lieutenant W. R. Johnson came upon the scene?

A He came upon the scene.

Q And you complained to him?

A I asked him would it be investigated. I explained to him I wanted to call a lawyer. I wanted this matter to be investigated. I asked him for an immediate phone call and he denied everything, told me to return to my cell.

Q Now, I have had marked as Defendant's Exhibit Number 7, and it has been moved into evidence, a document that Lester Robinson, Assistant Administrator of Operations has identified as being kept in the business of the jail, and I want to read this document to you. Mr. Schaars has seen it and I want you to agree or disagree with the nature of this incident.

A Okay.

Q This is by W. R. Johnson, Lieutenant.

"On this date while making my rounds, [479] I was coming out of Northeast Level 1, when at the same time Officer Brown was coming in with Bailey. Bailey said, 'Lieutenant, this man been threatening me, to the infirmary and back.' He then said write a report and give me a copy now. I told resident Bailey I would not write a report, because of his statement. He then replied, 'Okay, I see where you are coming from.' 'So when I kill one of you officers then they will do something.' He then said the two officers in the block heard Officer Brown threaten him. I asked the officer . . ."—apparently, Officer Brown— ". . . one at a time, both said, 'No'. He asked three or four residents did they hear the officer threaten him, they said 'Yes,' he threatened the man which was Bailey. I told Bailey to go to his cell, and I would investigate this matter some more. Resident Bailey responded by saying, 'Let me call my lawyer, I want to press charges.' I told him no phone calls on Saturday and Sunday. He said, 'You are a lieutenant, order him to let me make a call.' I told him no and to go to his cell, he said, 'Well, if you can't do that, let me square off with him, I know you got the power to do that.' I told him again to go to his cell, [480] he started. He turned around, came back and said something to Officer Hammond. I was in the control booth at that time. Officer Hammond came to the booth and said resident Bailey was not going back to his cell. He wants you to get the M.T.A. up here to check Jamison's back. Officer Armstead picked up the phone, I told him (Bailey) to go to his cell. He went in.

"I request that when they have to be escorted, let two officers escort one. I also request that they do not be out at the same time for anything."

Is that a fair representation of what occurred?

A Some of it is.

Q Okay, now that incident along with the other incidents that you referred to, did there come a time that you had a hearing before the board?

A On this particular incident you're speaking of now?

Q Yes, let's call that the Brown incident.

A I can't say.



Q Did there come a point in time that you had a hearing on the Graves' incident?

A I was given a disciplinary report.

Q Now, disciplinary report is one thing, a hearing is another. Did you have a hearing with Mr. Robinson present?

[481] A Yes.

Q And, did you tell him about the assault that Officer Graves had committed on you?

A Yes, I explained it to him.

Q What did he say?

A He didn't say anything about it. He said, "We're not going to deal with that." 'We're going to deal about the fight you had with the other inmate.'

Q Was Officer Graves there?

A No, he wasn't.

Q Did you ask them to investigate it?

A Yes, I did.

Q Did they ever investigate it?

A Not to my knowledge.

Q As a result of the assault from Graves, did you take any legal action on your own?

A Well, like I had explained to Officer Robinson—

Q You mean Lester?

A Lester Robinson. I explained how I tried to go to Major Long with it. I tried to go to Captain Dickinson with it, you know, but they continued to tell me what would happen if I testified in the Brad King case. As a result, that I would not receive any investigation or any assistance from them. I filed litigations in Superior Court against Officer Graves.

[482] MR. DRURY: Mark these please.

THE DEPUTY CLERK: Defendant Bailey's Exhibit 10 marked for identification.

(Whereupon, Defendant Bailey's Exhibit Number 10 was marked for identification.)

BY MR. DRURY:

Q Did you have a lawyer on the case that you filed?

A No, I didn't.

Q I showed this to counsel.

I show you what has been marked as your Exhibit Number 10, and ask you whether you can read that?

A Yes.

Q Tell me what it is.

A These are documents that were sent back to me from Superior Court notifying me that my writ against Officer Graves had been received and that they was sending me the forms to fill out in forma pauperis and that a motion had been granted, and all I had to do was fill out the summons and the subpoenas and send them back to the U.S. Marshal for service against the people that I was charging responsible for Officer Graves' action against me.

MR. DRURY: May I have this moved into evidence. Your Honor?

THE COURT: Do you wish to be heard on it?

[493] MR. SCHAARS: Your Honor, I would just like to see it one more time.

THE COURT: All right.

MR. SCHAARS: Thank you, Your Honor.

MR. DRURY: Your Honor, for purposes of identification, there are three separate exhibits here, but this will all be referred to as Bailey's Exhibit Number 10.

THE COURT: It will be received.

THE DEPUTY CLERK: Bailey's Exhibit 10 received in evidence.

(Whereupon, Defendant Bailey's Exhibit Number 10 was received in evidence.)

BY MR. DRURY:

Q Now, very briefly, Mr. Bailey, I'm going to turn the page. I'm going to move to the last set of papers here, which is a handwritten page, series of pages and what is this, sir?

A This is a writ that I filed against Officer Graves. This is a writ, really that I filed against Officer Graves, but I also filed it against his superiors for his actions.

Q Okay. And it is—you called it a writ, but really it is a petition or complaint.

A Petition or complaint.

Q This is a civil action pending in Superior Court, is that correct?

[484] A Yes, it is.

Q And, you are asking for damages in this case?

A Yes, I am of \$100,000.

Q Is this notarized by a notary public?

A Yes, it is.

Q Where did you find this notary public?

A At 1901 D Street, Southeast.

Q This is a lady by the name of Doris P. Johnson, who works down there?

A Right.

Q When did you sign this? When did you send it in?

A I signed it on July the 9th, 1976.

Q I see. And you sent it in when?

A I sent it in that day.

Q Okay. Now, as a result of sending this in, did you also receive something back from the Court?

A At a later date the Court sent me some documents.

Q Did you ever receive an answer from the District of Columbia Government?

A Yes. At first I received some subpoenas and summonses. The Court informed me to fill in the subpoenas and return them to the U.S. Marshal's office for filing.

Q I see. And the summonses were requests for people to appear at your trial, weren't they?

A Yes.

[485] MR. SCHAARS: I object at this point. The details of this litigation, I suggest are really not relevant. It is clear that Mr. Bailey has filed a lawsuit.

THE COURT: I will sustain it. It is in evidence.

\* \* \* \*

[492] THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Cr. No. 76-735-4

UNITED STATES OF AMERICA

v.

CLIFFORD BAILEY, DEFENDANT

RONALD COOLEY, DEFENDANT

RALPH WALKER, DEFENDANT

Washington, D.C.

March 11, 1977

The above-entitled matter came on for further trial in open court at 9:50 o'clock a.m., before:

THE HONORABLE OLIVER GASCH

United States District Judge, and a Jury.

\* \* \* \*

[528]

CLIFFORD BAILEY

was called as a witness by and on his own behalf and after having been previously sworn was examined and testified further as follows:

DIRECT EXAMINATION—continued

BY MR. DRURY:

[529] Q Mr. Bailey, are you familiar with the xerox copies and the original record?

A Yes.

MR. DRURY: As his counsel, I would agree to the substitution and turn the original back or I will have Mr. Patterson turn the original back to the jail officials.



THE COURT: Thank you.

BY MR. DRURY:

Q Yesterday, Mr. Bailey, I believe that we ended up with your identifying the suit that you filed and explaining who you filed it against, is that correct?

A I believe so. I know, yes, sir.

Q Speak into the microphone.

A Yeah, I believe so.

Q Now, as a result of that suit did you receive any instructions from the court people at Superior Court who issue subpoenas?

A Yes, I did.

MR. SCHAARS: Objection, Your Honor, as to the relevancy.

THE COURT: Just a minute, please. Go ahead. What was your question, would you repeat it, please?

BY MR. DRURY:

Q As a result of the filing of this suit, did you receive instructions from officials of the Court who issue subpoenas?

[530] A Yes, sir, I sent subpoenas to—

MR. SCHAARS: Your Honor, we have an objection.

THE WITNESS: —Officer Graves and his superiors.

THE COURT: What is your objection?

MR. SCHAARS: As to relevancy. There is no doubt he filed a suit. Whatever that suit is about has been presented.

THE COURT: I think that is sufficient. He filed suit. The papers are in evidence.

BY MR. DRURY:

Q Now, as a result of filing the suit were any comments ever made to you by jail officials concerning this suit?

A Yes, there was, at various times.

Q And the suit was filed, I think you testified yesterday on the 9th of July.

A I believe so.

Q And, what were the nature of these comments and who made them, sir?

A I was approached again, by Officer Graves, concerning it and he was explaining to me that I should withdraw it and if I didn't withdraw it that some of his friends would do something to me, and if I was ever placed in a secluded area, they could lead me off, that they would do something to me. Like I, I would like to state to the Court that I was seized off. They came and requested me to move to Southeast. They told me I was moving to the hospital, from Northeast 1 to the [531] hospital. So, I explained to them that I didn't report no sickness to the doctor, that I didn't talk to no doctor for the whole week. Why was I going to be moved to the hospital? They explained to me that that was the doctor's orders, so I refused to go. So, about maybe nine, or twelve—I couldn't be sure, but it was a number of them that came down to my cell and told me that I had to move. So they took off my door and they came in and it was a scuffle, you know, and they got the best of me. They got me down, put the handcuffs on me, you know, and I was hit several times. They put handcuffs on me and took me out of my cell, took me up to Southeast 3.

Southeast 3 is a mental ward for all mental patients, mostly every individual on Southeast 3 takes medication. I'm not on any medication. I don't have no history of no mental illness, but I'm up on the ward with them. These individuals don't take showers, you know, they don't let them make phone calls. They don't let them have recreation, you know, deny them all of their privileges.

I had to bring to your attention that I had a shower Monday, and that I hadn't had a shower all week. I don't know what you did yesterday, but I was given a shower last night after complaining.

MR. SCHAARS: Objection. Whether this gentleman had a shower yesterday or every day since August 26th is absolutely immaterial to this case.

[532] THE COURT: Well, I think that portion of his testimony is. Get on to something else.

BY MR. DRURY:

Q Now, directing your attention back to the time period after you filed your suit?

A Yes.

Q I asked you originally about the nature of the comments that were directed to you about the filing of the suit.

A Uh-huh.

Q Who made the comments and can you recall when they were made?

A No, I can't recall when they was made, you know, I can't say like what days or, you know, or nothing like that. The times that they was made.

Q Why did you file this suit?

A Because of the abuse from Officer Graves hitting me, like I complained to Officer Robinson, the associate superintendent. I complained to him. I asked for an investigation. I asked to be appointed a lawyer, because they have a lawyer that is supposed to sit with you on all disciplinary proceedings but I was denied the right to have a lawyer. I come down here on a writ. I didn't have a lawyer. I had been away from the Washington area for some time, like my people are unable to hire me a lawyer, so I asked that they appoint me a lawyer. They refused to do so. So, I had to draw up my own [533] litigation.

Q Let me ask you something. You heard the testimony of Lester Robinson, and—

A Yeah, but see—

Q Let me ask the questions, please.

You state that there was a hearing, originally before the Adjustment Board on June 25th, 1976 and that concerning the letter or the report that was made while you were in culinary detail. June 25th or 26th, there was also an Adjustment Board hearing, concerning a charge of fighting on June 29th and through your testimony we have pointed out that there were two fighting incidents. One, Mr. Brown, and one with Mr. Graves. On the 30th of June there was another Adjustment Board hearing. Those were the Adjustment hearings that occurred, how-

ever, as you recall from the testimony of Mr. Robinson, you also had hearings before the Adjustment Board on July 8th, on July 22nd, on August 6th, and on August 20th, is that correct?

A I couldn't say for sure.

Q Do you remember going before the Adjustment Board on a number of occasions?

A Yeah, I did go before the committee.

Q Did you ever have an attorney present with you?

A No, I haven't.

Q Did you request an attorney?

[534] A Yes, I did.

Q Were you ever informed of why you were going to the Adjustment Board all the time?

A No. The officer don't know why. The officer don't know but to come and get you to take you to the Adjustment Committee. He don't know.

Q Did Mr. Robinson or anyone in his employ tell you why you were going?

A After you get in, the Committee, they would tell you just your review. They just say that they are bringing you in the committee room and they: "This is just your 15 day or 14 day review."

Q Now, did you ever ask them to investigate?

A I don't—

Q Let me ask you my question. Did you ever ask them to investigate the original letter that had claimed you were an escape risk being at the review hearings?

A Continuously.

Q Did they ever tell you what the result of these review hearings were?

A No, sir.

Q Did you ever tell or comment to Mr. Robinson or anyone who was at the Adjustment hearings that threats had been made to you as a result of one: the fighting situation with Mr. Graves and as a result of two, your testimony in the Brad [535] King case?

A Yes.

Q Did they comment on that?

A No.



Q Do they have any procedure at the Adjustment hearings, as you heard Mr. Robinson testify, that they have a stenographer take down the words that are said, or a tape recorder that runs—

A They don't have that. They don't have that.

Q You heard him testify the other day that they have some type of a transcript.

MR. SCHAARS: Objection, Your Honor. That is not the testimony of Mr. Robinson.

THE COURT: Sustained. Mr. Robinson said they made notes in the report.

BY MR. DRURY:

Q Did you ever see these gentlemen taking notes?

A They have a gentleman sitting there, he takes some and writes down, but you don't know what he's writing.

Q Now, you made—

A They didn't have—never read anything back to me that this gentleman wrote down or never told me that, "We are writing down what you supposed to have said." I have never seen anything like that.

Q Now, did there come a time after your two fights in [536] July or August, as best you can recall, that a man named Oliver Boling came and talked to you?

A Yes.

Q Now, you know who Oliver Boling is today, don't you?

A Yes.

Q He testified the other day?

A Yes.

Q Do you recognize him?

A Yes, I remember him.

Q Do you know him, personally?

A I don't know him, personally.

Q Is he a friend of yours?

A No, he is not a friend.

Q Have you talked to him prior to coming to trial today or the other day?

A No, I haven't.

Q Where did you see Oliver Boling?

A I first see him on Northeast 1.

Q Did you ever have any extended conversations with him?

A No. We wasn't permitted out of our cells unless we were going on visits or if an individual was real sick and some confusion came about, like we had a lot of times, like I have gotten sick, and they refused to take me to the hospital.

Q We will go into that later. Mr. Bailey, I'm directing [537] my questions to you right now about your contact with Oliver Boling.

A Oh, oh.

Q Now, did you have a time to talk to him at one point?

A Yes, I did.

Q Tell the ladies and gentlemen of the jury how it occurred and what was said.

A He came to my cell one day and he explained to me that two officers that day came to him and told him they was going to kill me so I asked him the officers' names, you know, so he said, "Webb and Dickinson," you know. I asked, "Why did they tell him that," you know? He said, "He don't know." He said, "But they said that they was going to do something to him also." So, I said, "Well, you know what is the reason for them saying that they was going to you know, kill me?" He said, "I don't know, man." He said, "Like I don't want to get involved in it, you know." So, the officer told him to come on, go back to the cell, so he had to go back to his cell.

Q Do you know whether Oliver Boling from your personal knowledge, do you know whether he ever got in any trouble with the guards?

MR. SCHAARS: Objection, Your Honor, as to relevancy.

THE COURT: Sustained.

BY MR. DRURY:

[538] Q Did there come a time that you were ever physically beaten by any of the guards?

A Yes. I was assaulted by Officer Graves. I was assaulted by Officer R. Brown and I was assaulted by Officer Webb. This is the officer that came to my cell with several other officers, and choked me up.

Q Why?

A Didn't give me no reason, just opened my door.

Q When?

A I don't know.

Q Was it prior to your escape?

A Oh, yes.

[541] BY MR. DRURY:

Q You heard Officer Robinson testify that there was an order for special handling of you?

A Yes.

Q Could you please describe to the ladies and gentlemen of the jury what that meant, not according to the rules and regulations that Mr. Robinson read, but according to what you saw, what you felt and what was done to you?

A Um, to me I was locked down 24 hours a day.

Q What do you mean, "locked down?"

A I was locked in a place, in a cell, and the cell was all concrete except for the door, which is a bar, which has bars and it is controlled by the little bubble, they call it, when you can see the officer who would pop open your door from the bubble or lock your door. At no time could you—you know push your door open or come out your door. I had no window, you know, the only opener was the barred door, which was all bars. That was the only opening. The rest of my cell was all concrete, and you're placed in this cell. You're locked in [542] there 24 hours a day.

Now, I did get showers every now and then, various officers would let me take showers, but when I did take showers they had to be specially escort officers to let me take showers. I usually came out—if I had handcuffs on, or leg irons, or I had them both on. If I was escorted to a visit, I had to be leg irons. I had to wear leg irons and handcuffs if I went to the hospital I had to wear leg irons and if I went on an attorney visit, not with this lawyer, but another lawyer—Mr. Drury, you can testify, when I came to see you, you can testify I had leg irons and handcuffs on. I could not write no notes.

MR. SCHAARS: Objection. This is not the period we are talking about.

THE COURT: I sustain that objection. Mr. Drury was talking about the period prior to August 26th.

BY MR. DRURY:

Q We are talking about the summer. Would you explain?

A The conditions never changed. I mean I was under the same thing.

Q Now, you have given that testimony and it is on the record, Mr. Bailey, but I want you to tell the ladies and gentlemen of the jury what did special handling mean in the summer of 1976, even though it may not be any different?

A Special handling means you had to be handcuffed and shackled for any movement outside of the unit.

[543] Q When you say, "The unit," do you mean outside of your cell or Northeast 1?

A Outside our cell, anytime you come outside your cell.

Q Please proceed.

A Anytime you come outside your cell you had to be handcuffed and shackled. Anytime you came out your cell it had to be special escort officers there who had to come and let you out. The officers in the unit had written orders signed by Officer Robinson stating that a specific individual would not be let out of their cell together anytime. The only way they would be let out that they come out by themselves.

Q Now, explain to me this: A leg iron is a handcuff on your leg, right?

A Yes.

Q Tell me and tell the ladies and gentlemen of the jury approximately how far you can extend your leg when you walk?

MR. SCHAARS: Your Honor, I object.

THE WITNESS: Not even 12 feet. The chain is not as long as 12 feet, 20.

BY MR. DRURY:

Q 12 feet or—

A 12 inches. The chain is not as long as 12 inches.



Q And these are placed on your ankles?

A On the ankles, yes. And handcuffs about maybe [544] three or four inches, I guess. You know, I'm just guessing. I don't know.

Q Let me proceed with another section of my inquiry.

There was a phrase used yesterday by, I think Mr. Cooley in which he said, "Rec." Would you please tell the ladies and gentlemen of the jury what recreation was available to you during the summer of 1976?

A During the summer, when I was on Northeast 1, we didn't receive rec. It was very rare, you know, if we did come out for rec, we had to be handcuffed and shackled, you know, and special escort officers had to be in uniform if we came out of rec. But, I don't remember coming out for rec.

Q Where would you have recreation, if you ever had it?

A Inside the unit. See, we never—

Q Out in front of your cell?

A Right. Out in front of the cells. See, we never went out doors.

Q The sun never shines on you in Northeast 1? You would never see the sun.

A It is impossible for you to see the sun in my cell—

Q During the summer—

A —in the summer of '76.

Q Did you ever get outside for a walk in the fresh air?

[545] A I never went outside. The sun never touched me in the summer of 1976.

Q Now, did there come a point in time in late August that you have heard testimony about, that the cell was—or the unit was a particular dirty situation?

A Yes.

Q Can you tell us about when it was?

A Let's see. Like I was on the unit at that time. I can't say the exact date or days that these various incidents took place, but I was on the unit. I do not know that they took place. I took part in quite a few of them, concerning individual visits being delayed for two and three hours at a time, concerning individuals not being

able to eat. They wouldn't serve nothing, none of us food, for a couple of days. They wouldn't take individuals to the hospital who were sick. Had quite a few people down there that was sick, you know, because they wasn't receiving no ventilation, you know.

Q Let me ask you this: During the fires that were started would you tell the ladies and gentlemen of the jury about any injuries arising from the smoke that would occur?

MR. SCHAARS: Objection.

THE WITNESS: There was quite a few victims suffered from smoke inhalation.

THE COURT: Wait a minute.

MR. SCHAARS: I would ask that the witness' response [546] be limited to any injuries which he contends he may have received.

THE COURT: He may answer it both ways.

BY MR. DRURY:

Q Were there fires in mid-August?

A Quite a few fires.

Q Answer my question yes or no.

A Yes.

Q Were you ever the victim of a fire? Were you ever burned in any way?

A The side of my face was burned.

Q Did you ever see any—were you ever the victim of smoke inhalation?

A I was the victim, but I didn't get into the hospital.

Q Did you ever see anyone taken out to the hospital for smoke inhalation?

A See, from where my cell was—

Q Just tell me, could you? Did you see anyone?

A I think one dude. I think.

Q How long were the fires allowed to burn in Northeast 1 or the smoke allowed to rise?

A The whole—like it might be 80 people in Northeast 1, and like I can't say how many would assist in throwing stuff, burning stuff up, but like it would be fires around the whole section. You know, everybody—it would be fires all the way around and like it is hard to

say how long the [547] fires might burn, like maybe an hour. But like the smoke—all of the smoke when the fires go out from the blankets and sheets and stuff, the smoke would settle in the building, because there was no air conditioning, you know.

Q You heard Mr. Robinson testify that there is air conditioning throughout the jail.

A No. See, Mr. Robinson told a story, you know. Like I was down in '68 when Mr. Robinson brought in a shotgun and shot a guy, you know.

THE COURT: Just answer the questions.

MR. SCHAARS: Objection.

BY MR. DRURY:

Q You heard Mr. Robinson testify that there was air conditioning.

A Yes, I heard what Mr. Robinson say.

Q From your experience in Northeast 1, was it ever not running?

A It wasn't running at all when I was there.

Q Now, let me proceed to another section of inquiry. Did there come a time, prior to the date of your escape that—strike that paragraph. Did you leave D.C. Jail on August 26th, 1976?

A Yes.

Q When?

A I think it was August 26th.

[548] Q Can you remember the exact date?

A It was August 26.

Q Was it morning, evening, day, dusk, do you know when?

A It was dark outside. It was still dark outside. I remember precisely, you know.

Q Tell the ladies and gentlemen of the jury in your own words how it came that you left D.C. Jail?

A All of these threats had been placed upon me and various individuals had been telling me that the officers going to kill me, take my life for testifying in the Brad King case, and they showed me what they would do, you know, by what Officer Graves did, what Officer R. Brown did, and what Officer Webb did to me. I was in constant

fear of my life, you know, that I don't want you to think that it is just because of this incident that I was in fear, you know, but like one particular time—I can show you the scars I have. I was beat before, see? I received this. And see, this. And almost died from this. I know them people are serious about when they talk about taking your life. See, there ain't no doubt in my mind about that. I had that much fear in me.

Q Mr. Bailey, tell us how it came you left the jail.

A That morning, they opened my cell door and I was in bed and my door was open.

Q Why did they open your cell door?

[549] A I don't know why they opened it.

Q Was this some particular time of the day that some event was occurring, at that time?

A It was early in the morning.

Q What happened early in the morning?

A Normally they feed and it is court call, to be taking individuals back and forth to court. But now I know that I wasn't going to court. It was impossible for me to go to court, because I didn't have no case in court. The only reason I was there was on the Brad King case.

Q Okay.

A I got up out of bed. I peeped out the door. I didn't see no one. I went back, put my tennies on and my clothes. I put my sweatshirt on and I just looked. I was wondering what was happening, you know, why is my door open? Why ain't nobody else's door open? I know my door ain't supposed to be opened. Special orders say these doors wasn't supposed to be open.

Q Tell us what happened.

A So then I just, you know, I don't know even how to describe it. I guess the face of God, you know, I just was able to get out of there.

Q Tell us how you got out.

A You know—

Q What section?

A I'm going to be truthful with you. I was on Northeast [550] 1 and like from the fear of death, you know—

Q Tell us how you got out of Northeast 1?

A I don't even remember exactly.



Q Did you climb out a window or go through a door?

A I don't even remember. It seems like I just blacked out. I told my other lawyer that, you know, that is why he had sent me to St. Elizabeths, you know, seemed like I was out, just out of it. I thought they was coming to kill me that morning. Hey, I thought they was coming to take my life.

Q Can you tell the ladies and gentlemen of the jury how you left Northeast 1? Did you go out a window?

A I have been thinking about it and trying to figure it out. I admit I left that jail. There is no doubt about it. I swear to God I left there.

Q Would you prefer not to tell the ladies and gentlemen of the jury?

A I want to tell them, but I can't tell them. I don't remember.

Q Did you go out a window?

A I don't remember going out a window. I don't know. All I can say is I just don't remember. I just blacked out that morning.

MR. DRURY: I have no further questions.

### CROSS-EXAMINATION

BY MR. ROBBINS:

\* \* \*

[552] Q During the summer of '76, did you ever have an occasion to see Mr. Cooley suffer any beatings at the hands of the guards at the jail?

A Yeah, I seen an incident down by the cell, yes.

Q Would you describe that for the jury?

A Well, like I don't know where he was coming from, you know, but a couple of officers had jumped on him down by his cell, you know.

Q And what happened?

A They threw him in the cell.

Q Did you see them hit him?

[553] A Yes.

Q With what, if anything?

A I couldn't see—see, I'm in a position like I can see, but I can't see everything that is going on, because like

all of the cells in a straight row, but you only have a little crack to see out your door, like you can see the scuffling going on, you can see the figures, but you can't see clearly from my cell, because our cell was in a row, straight in a row, and I couldn't see through the wall.

Q Could you hear anything?

A Yeah, I could hear good.

Q What did you hear?

A I heard scuffling, you know. I heard Tim making some noise, you know.

Q Did you hear any threats?

A Well, there was a lot of noise going on. All of the convicts was hollering, you know, "Leave that man alone," you know, and using a lot of profanity, you know.

Q Do you remember when this was?

A I couldn't say.

Q In relation to August 26th?

A No, I couldn't say.

Q It was during the summer, though?

A Yes.

Q Do you ever remember seeing Mr. Cooley after this occurred in the hours afterwards, the day afterwards?

[554] A I couldn't say, you know. We was on dead lock, you know. When you're on dead lock you don't come out yourself. You stay locked in your cell. They brought the individuals from another unit over to our unit to feed us, you know. That is how we eat. No one came out of the cells on our unit.

Q Are there any other incidents that you observed occurring to Mr. Cooley?

A Not that I can recollect, not that I can bring to mind.

\* \* \*

[561] BY THE DEFENDANT WALKER:

Q All right. Mr. Bailey, how did you get out of the D.C. Detention facility on August the 26th, 1976?

A It was early in the morning. The officer opened my cell, so I peeped out of my cell. I said, "What's my cell doing open?" I'm saying this to myself. So, I put my clothes on and I walked up to the tier to look out the window, looked around to see what was happening, see why

I was out. I looked [562] and seen that there was a cell open. When I looked in the cell the whole window was out. So, I was out. I was just amazed. I looked out the window. I put my whole head out the window and was out. So, I just—I climbed out the window and I left.

Q So, in other words you're saying that you left out of a window—

A Yes.

Q —that that was out in a cell?

A Yes, sir. The cell wasn't too far from mine. I walked up the hall. I looked. It was open. I looked. I said,—I looked, I went in the cell. I looked out. The whole window was gone, the window was out.

Q Okay.

A That is why I left. I climbed out the window.

Q What was the number of the cell that you went out of?

A It was the end cell.

Q How far was your cell, the cell that you resided in, how far was that cell away from the cell that you went out of that you went out of this open window?

A Maybe three cells or four cells. I don't recall right now.

Q And, who if anyone went out of the open window with you?

A Wasn't nobody out when I come out.

[563] Q What do you mean, "Wasn't nobody out when I come out?"

A When I peeped out my cell, I didn't see no one. I backed up in my cell. I put on my clothes.

Q You mean no one else was out of their cells?

A No.

Q So, you left by yourself, is that what you're saying?

A Yes, that is correct.

Q Did you jump out of the window? How did you come out?

A There was some sheets hanging out the window. I just left. I just climbed down, jumped down and got out.

THE DEFENDANT WALKER: I have no further questions for the witness.

THE COURT: All right. Mr. Schaars.

# CROSS-EXAMINATION

BY MR. SCHAARS:

Q Mr. Bailey, did you ever surrender yourself to the police in this case?

A I had the police called. I had the jail officials called several times.

Q Did you call them?

A No, I didn't.

Q Did you ever go to a police precinct in the District of Columbia and surrender yourself?

[564] A No, I didn't, sir.

Q Do you know of the existence of the Federal Bureau of Investigation?

A The existence?

Q Did you know that they exist?

A Yes.

Q Did you ever surrender yourself to them?

A No, I had them called.

Q Did you call them?

A No, I didn't.

Q Do you know of the existence of the United States Marshal's Service, people employed by the Marshal's Service that are in this courtroom, the gentlemen right to your right?

A Yes, sir. Yes, sir.

Q Did you, yourself, ever call these individuals—

A No, sir.

Q —to surrender yourself?

A No, sir.

Q Did you ever appear at any courthouse within the District of Columbia or anywhere else to surrender yourself?

A No, sir.

Q Now, you indicated, sir, in response to questions from Mr. Drury that Captain Dickinson and Major Long threatened your life, is that correct?

A A couple other officers also.

[565] Q When was it that Major Long threatened your life?

A I couldn't be exact.



Q Well, sir, if you arrived at the jail in June of 1976 and you left in August of 1976, which is the closer to your time of arrival or time of departure?

A I believe it was after I had an interview with Brad King's lawyer. I don't remember.

Q I'm not asking you that.

A See, I don't know exactly. I don't—

Q Was it closer to the time that you arrived or the time you left the jail?

A I can't say exactly. If I could say I would say.

Q Where were you when this threat was made upon you? Exactly where were you in the jail?

A At that time, um, let me see. I might have been on Northeast 3. I can't say for sure. I wasn't—

Q Was Captain Dickinson there when this happened?

A No, he wasn't.

Q He wasn't there?

A No.

Q You're positive?

A Pretty sure he wasn't.

Q But Major Long was there?

A Yeah, Major Long was there.

Q Now, I'm certainly human and—but, I have some [566] notes here that I took, and it is not my recollection that controls, but I recall you testifying—

MR. DRURY: I object to the self-serving editorializing.

BY MR. SCHAARS:

Q I recall you testifying on direct examination that Major Long and Captain Dickinson were there and threatened to leave you hanging and they were there together and now which will it be, sir?

A I testified that Captain Dickinson and Officer Webb had threatened me.

Q When was that, sir?

A I don't remember exactly when it was.

Q Was it before or after Major Long threatened you?

A I can't be sure.

Q Was it closer to the time that you arrived in the jail than it was to the time that you left?

A Well, sir, after they had threatened my life, you know, like I started watching, just watching things more closely, and I wasn't—

Q I'm sure you did. I didn't as [sic] you that.

A I wasn't paying attention to the time.

\* \* \*

[567] Q Now, sir, you testified about some fighting incidents and you indicated that they occurred on the way or back from your appearances in Superior Court on behalf of somebody else, is that correct?

A Yes, sir, Brad King.

Q Do you know what the date of that was, sir?

[568] A No, I don't.

Q Well, do you know when you went to court in that case?

A No.

Q Do you know whether or not it was the month of August?

A I'm pretty sure—I'm pretty sure it wasn't the month of August.

Q I'm sorry, sir?

A I'm almost sure it wasn't the month of August.

Q It was in the month?

A It wasn't in the month of August.

Q Thank you, sir.

A Yes, sir.

Q Would that make it June or July, sir?

A It is possible, sir. I'm pretty sure it wasn't August.

Q Now, sir, you also testified that there came a time when you got into a scuffle with another inmate and Officer Graves became involved in it?

A Yes, sir.

Q Do you remember when that occurred, sir?

A That was on the way when I was coming back from court.

Q Well, is that the incident that we have just been [569] talking about that you're pretty sure it did not occur in the month of August?

A This incident with Officer Graves?

Q Yes, sir.

A This incident, yeah, I don't think that occurred in August.

Q Sir, do you know how many lawsuits you filed since you have been an inmate?

A Um, I filed one, yes.

\* \* \*

[571] Q Now, sir, this lawsuit that you have referred to and everybody else has referred to that you filed with regard to Mr. Graves, has that come to trial yet?

A No, it hasn't.

Q Have there been any court appearances that you have made in that suit?

A No. The officials at the jail asked for an extension of time.

Q Isn't it correct that it is the District of Columbia Corporation Counsel seeking an additional moment of time, rather than the officials at the jail?

A Well, he's the one that prepares the writ.

Q The lawyer for the jail?

A So that means that the jail is not ready to answer my—

Q Are you a lawyer, sir?

A No, sir.

Q Now, Mr. Bailey, there has been no decision on the merits of your lawsuit—

A No, sir.

Q —on whether or not what you say is true or what you [572] say is not true in that lawsuit against Mr. Graves, no Court has ruled on it?

A No, sir.

Q Now, sir, you indicated that there was a time that nine or twelve correctional officers descended upon you, told you you were going to the hospital and gave you a rough time. When was that?

A That was when they took me up on Southeast 3, put me up on the mental ward, you know. I'm practically the only one up there that is not taking medicine.

Q Was that before or after August 26th?

A That was after.

Q Now, sir, you indicated that there came a time that you complained about a back ailment?

A Yes.

Q You also indicated that a medical technician did come to see you, is that correct?

A Yes.

Q Am I accurate in saying that you also testified that you burned everything that you could in that cellblock in Northeast 1?

A No, not everything that I could. I burned a lot of things that was in my cell. I couldn't come out of my cell, but I burned sheets, blankets, you know.

Q The things you could get a hold of?

[573] A Trash. There's a lot of things I wanted to keep that was personal, so I wouldn't burn them. I wouldn't burn my clothes. I would be naked.

Q Something that was important to you, you wouldn't burn it?

A Right.

Q Anything else you would burn?

A Well, my bedding was important, for if I got sick, couldn't get to the hospital for some other reason, they wouldn't feed us or something, yeah, I would burn something.

\* \* \*

[574] Q Now, sir, could you give an estimate of how many threats you can recall receiving, yourself, while you were in the District of Columbia new jail facility in the month of July?

A No, I sure couldn't.

Q Were they on a daily basis, Mr. Bailey?

A No, they wasn't on a daily basis.

Q Can you recall how many, if any at all, you received during the month of June?

A See, like I didn't have—like only on a few occasions, you know, I had the opportunity to make notations, you know, wherein I was hurt, you know, or something specific happened that I would bring it to the physician's attention, the officials. Like when I had a threat made, you know, there was nothing I could do about a threat. I'd bring it to their attention.

[575] Q Sir, I'm not asking what if anything you did about it, I'm just asking if you recall how many there were.

A No, sir, I couldn't.



Q How about during the month of August, sir?

A No.

Q You don't remember?

A No.

Q Were there more than ten?

A I don't think it was that many.

Q Well, sir, would it be more than five?

A See, you know, like I can't give no specific estimate, you know.

\* \* \*

[583] Q Do you remember receiving any threats on the evening of August 25th?

A No, nothing that I can recall.

\* \* \*

[584] Q You heard Mr. Cooley testify here yesterday, did you not?

A Yes, sir.

Q And you heard him make reference to the fact that the only reason he left was because the two people that were on trial with him threatened him?

A He said, "They."

\* \* \*

[586] Q Did you see him that morning?

A No, sir.

Q And, is it your testimony that you didn't threaten this gentleman in the blue suit here, you didn't coerce or force him into leaving the jail?

THE DEFENDANT WALKER: Objection, Your Honor, he answered that once.

THE COURT: No, that question hasn't been asked. You may ask it.

THE WITNESS: No, I didn't.

BY MR. SCHAARS:

Q You never said a word to Mr. Cooley, is that correct?

A No, sir.

Q You peeked out and you left?

A Yes, sir.

Q Do you remember what month you were captured?

A November.

Q November?

A Yes, sir.

Q Of 1976?

A Yes, sir.

Q And, is it true that you did not surrender yourself?

THE COURT: I think you have been into all that.

THE WITNESS: I had people call the jail several times.

[587] MR. SCHAARS: Nothing else.

## REDIRECT EXAMINATION

BY MR. DRURY:

Q Why didn't you surrender yourself?

A I was in fear of my life. I know that if I turned myself in I would still be under the threats of death. Always knew that the FBI wanted to kill me, after I escaped, so I was in limbo. I didn't know what to do. I did have some people call to the officials at the jail on several occasions.

Q Let me ask you a question: You stated that you never surrendered yourself, because you were still fearful of the threats?

A That is right.

Q Did you understand where you would be returned to?

A Yes, sir.

Q Where?

A The new detention center, 1901 D Street, Southeast.

Q What section?

A Northeast 1.

Q Did you know who the guards would be?

A The same officers that was there before I left.

Q Did you ever hear that the FBI was looking for you?

A Yes, I did.

Q Didn't you feel that you could tell the FBI that you didn't want to return to the D.C. Jail in Northeast 1?

[588] A No. The FBI was telling my people that they was going to shoot me.

\* \* \*

[589] BY MR. DRURY:

Q Now, when you're in jail do you have a calendar or a diary or a date book that you keep records on?

A No.

Q Do you—

A Some of us get calendars.

Q Do you have a calendar?

A No, I don't.

Q Do you have any type of a date book in which you write down significant events that occur during your jail time?

A No. No.

Q Do you know—do you have a watch that you have on?

A No, I don't have no watch.

Q As far as you know who keeps the days and the times for you, sir?

A Well, I don't worry about them, you know, like I ain't trying to show—I have been in jail a little while, you know. I don't keep track of time, you know, like that.

Q While you are in jail who keeps your time? Who keeps [590] the events that significantly affect your life? Who keeps a record of those?

A The administrators. The officers, they keep records, you know, if something happens they might keep records of anything that specific, that, you know, have some significance they would keep a record.

Q Are you allowed to see all of your records?

A No, I'm not.

MR. SCHAARS: Objection, Your Honor.

THE COURT: I think we have been into that.

MR. DRURY: I'm sorry.

BY MR. DRURY:

Q Now, what was your intention in filing these lawsuits?

A My intention was to stop the administrators from threatening my life.

Q Do you feel that these lawsuits were justified?

MR. SCHAARS: Objection, Your Honor.

THE WITNESS: Yes.

THE COURT: I think the principal thing is, he has filed them. The lawsuits are admitted in evidence. They speak for themselves. He has asked for \$100,000 damages.

THE WITNESS: I asked for \$150,000.

THE COURT: All right.

BY MR. DRURY:

Q Do you recognize that as a prisoner you have certain [591] rights as a prisoner?

A Yes.

Q Did you feel they were being violated?

MR. SCHAARS: We have gone into this a number of times.

THE COURT: You raised the question about lawsuits.

MR. SCHAARS: He has answered it three times.

MR. DRURY: It is more than just a prisoner's rights involved here, Your Honor.

BY MR. DRURY:

Q Now, special handling. When they put you on special handling did you feel that your rights were being violated?

A Yes, I did.

Q Now, in answer to Mr. Walker-El, you explained that there was a lady in the courtroom this morning.

A Yes. She's been in the courtroom all week.

MR. SCHAARS: Now, you just answer the question, please.

THE COURT: Wait a minute. I don't think that has anything to do with this. It is an open trial. Many people have been in this courtroom.

MR. DRURY: Your Honor—

THE COURT: There may be a hundred people, that is immaterial who has been in this courtroom. There is an official record being kept of this as I pointed out. We are not going [592] into any further testimony of who took what notes.



BY MR. DRURY:

Q Now, tell me about the—from your understanding of your cell. Can you cell be opened individually?

A No, it is impossible.

Q Can a police officer in the bubble push a button and have your cell opened, only?

A Yes.

Q Can a police officer or a correctional officer come to your cell with a key, turn it, and open it?

A No, he cannot.

Q Is the only location of that your cell can be opened at the bubble?

A Yes.

Q Can your cell be opened and the cell right next door remain shut?

A Yes.

Q You stated that you peeked out in the morning of August 26.

A Yes.

Q Was it light out or dawn as you recall?

A It was early in the morning. It was still dark.

Q And you proceeded out of your cell?

A Yes.

Q And what happened? You proceeded down and you saw an [593] open cell?

A I peeked out first. Like I didn't see anyone, you know. So I said, "I wonder what my cell door is doing open"? So, I backed up, put my tennies on and my clothes.

Q Your tennis shoes?

A Yes. I put all my clothes on, walked out of my cell. I walked down—I was walking down the tier. I seen the cell open.

Q Whose cell was it?

A It was Walker's cell.

Q Did you know it was Walker's?

A Yes.

THE DEFENDANT WALKER: Objection, Your Honor. That is a violation of my Fifth Amendment Constitutional Rights.

THE COURT: Overruled.

BY MR. DRURY:

Q Did you look in the cell?

A Yes.

Q Did you see him?

A No.

Q Did you see anything else in the cell?

A I seen mattresses and a table.

Q Did you see a window?

A Yes, I seen a window.

Q Was it open?

[594] A Yes, it was.

Q Did you feel you could climb through it?

A Yes. I looked out of it and I just left.

Q What did you see out the window?

A The wall, seen a wall.

Q You mentioned something about a sheet?

A Yes.

Q Now, how high up were you?

A On the second floor, I believe.

Q How far down to the ground, if you could approximate, look up that wall—

A About right up to there.

Q To the third horizontal line?

A Yes.

Q Sixteen, seventeen feet, Your Honor?

THE COURT: Something like that.

BY MR. DRURY:

Q What did you realize when you looked out and you saw no one and you saw an open window and you saw a sheet?

A I couldn't believe it. You know, I just couldn't believe it.

Q You saw freedom, didn't you?

A That is what I saw. I left.

Q Why?

A I was in fear of my life. When I seen the opportunity [595] was right there for me to go, I looked out that window and I seen it, I didn't see nobody, I didn't

see no officers, I ain't seen nobody out the window, just the wall, I got out of that window so fast and I got over that wall and started running so hard and fast I must have lost ten pounds getting away.

Q Even though it was dark out you saw a little bit of sunshine, didn't you?

MR. SCHAARS: Objection, Your Honor.

THE WITNESS: Yes, sir.

MR. DRURY: No further questions, Your Honor.

\* \* \*

[588] MICHAEL THOMAS DOZIER-BEY

was called as a witness by and on behalf of the Defendant Walker and after having been duly sworn was examined and testified as follows:

#### DIRECT EXAMINATION

BY THE DEFENDANT WALKER:

[599] Q All right. Will you please state your full name and where you presently reside to the Court, please?

A Full name is Michael Thomas Dozier-Bey. I'm presently living at Lorton Reformatory.

Q How long have you been residing there?

A Approximately six and a half months now.

Q Have you ever resided—or, let me say have you ever been incarcerated in the D.C. Detention facility located at 1901 D Street, Southeast?

A Yes, sir, I have.

Q When were you first committed to the Detention facility?

A Well, I can't recall the exact day, but my first incarceration was admitted at the old jail, where they have—

Q Let me ask you this: Were you housed at the D.C. Detention facility between July 11th, 1976, and August 26th, 1976?

A Yes, I believe I was.

Q All right. And, exactly within the D.C. Detention facility, what particular block were you housed in within that particular period?

A Northeast 1.

Q Northeast 1?

A Right.

Q Are you familiar with the cell house called Northeast 1?

A Yes, I am.

\* \* \*

[601] BY THE DEFENDANT WALKER:

Q Did you have any fear about coming into the Northeast 1 housing unit to work?

A No.

Q Had you ever been threatened in the Northeast 1 housing unit when you came over to work as far as someone doing any type of physical or bodily harm to you?

A No, I have not.

Q Now, I'd like to ask you this question: Have you ever, during—strike that, please.

During the time that you came into Northeast 1 to work on this detail, cleaning unit, what was the condition of [602] the block in your opinion?

A Well, the cell block was in—the whole cell block was in a state of disorder. There was plenty of times when I came in there had been floods or scraps all over the floor or after somebody burned the mattress or burned the trash. I wasn't allowed to clean up. The officer said I wasn't allowed to clean up. They left it the way it was. So my job was to come there and just feed. It was really in a disorderly position at the time.

Q So, in other words you're saying even though you were on the detail crew—

MR. SCHAARS: Objection.

THE COURT: He has testified. You needn't repeat his testimony.

THE DEFENDANT WALKER: All right.



## BY THE DEFENDANT WALKER:

Q You testified that you were on the detail crew or the people that came over from Northwest 1 to Northeast 1 to do the cleaning?

A Yes.

MR. SCHAARS: Objection. That is not his testimony. He came over to feed, not to clean.

THE COURT: Yes, I think that is correct.

## BY THE DEFENDANT WALKER:

Q All right. You came over to feed?

[603] A Yes.

Q But you weren't allowed to clean?

A Not at the possible time when I started coming over to feed, they wouldn't allow us to clean up.

Q Who was allowed to clean the Northeast 1 cell block during that period?

A No one.

Q And you said that you came over daily?

A Every evening.

Q And, the refuge or—was the refuge and the burnt materials and the trash and things that you saw all over the place every evening that you came over it was still there?

A Every evening.

Q So it was never cleaned up?

A Not to my knowledge.

Q Now, during the period you came into the Northwest—the Northeast 1 housing unit as a detail man, did you have occasion to talk to me?

A Yes.

Q And how often did you talk to me on these occasions?

A As often as possible when I came over.

Q Now, have you ever, during the period that you came over, had you ever saw me, with your own eyes, have any type of seizures or blackouts?

A Only once.

[604] Q All right. Would you explain that seizure or the blackout to the Court, the way that you saw it?

A Yes, sir. First of all, I'm not a doctor, but the way I seen it, like I was sitting in your cell one day and at first from there, you fell to the floor by your bed. I left immediately from in front of your cell to walk down to the box where the officer was, saying that I had a man sick up there. I didn't know what was wrong with him. He called all the detail men to the front and dismissed me from the block. From there on then I don't know what happened.

\* \* \*

[622]

THOMAS W. ROBINSON

was called as a witness by and on behalf of the Defendant Walker and after having been duly sworn was examined and testified as follows:

## DIRECT EXAMINATION

## BY THE DEFENDANT WALKER:

Q Would you please state for the Court your full name and where you presently reside?

A Thomas W. Robinson. I reside at the District of Columbia Detention facility, formally known as the D.C. Jail.

Q Uh-huh. How long have you resided there?

A I have been there now for about ten days.

Q Where were you subsequent to coming to the District of Columbia Detention facility? Where did you reside?

A The Medical Center for Federal Prisoners, Springfield, Missouri.

Q Springfield, Missouri?

A Yes, sir.

Q Have you ever had occasion before this time now to be housed in the District of Columbia Detention facility?

A Yes, I have.

Q And to make my question shorter, were you housed there between June the 1st and August the 26th of 1976?

A Yes, I was.

Q All right. Exactly where in the District of Columbia [623] Detention facility, what particular cell block were you housed in?

A I was on Northeast 2.

Q Is Northeast 2 some type of special block or anything?

A Yes, it is for the purpose that for the prisoners who work in the D.C. Jail.

Q For people who work in the D.C. Jail?

A Yes.

Q When you say, "Work," do you mean inmates or officials?

A Inmates that do—are doing labor in the jail, such as cooks, laundry, sweep up, clean up.

Q So, in other words in order to be in that block you would have to be on a privileged type detail?

A Yes, sir.

Q What detail were you on?

A I was with the culinary unit.

Q Now, do you know or are you familiar with an individual by the name of Ralph Walker-EI?

A Yes, I am

Q Would you indicate by pointing to him, please.

A The gentleman sitting right there.

Q All right. Now, Mr. Robinson, when did you first become familiar with me?

A In D.C. Jail, in the kitchen, in the culinary unit.

[624] He was working with me.

Q He used to work in the culinary unit with you?

A Yes, he did.

Q What month was this?

A It was between June and August.

Q Between June and August. All right. What was your function in the culinary unit, Mr. Robinson?

A I was the lead man in the tray room.

Q What was my function?

A You was a helper in the tray room.

[625] BY THE DEFENDANT WALKER:

Q All right. Mr. Robinson, do you have personal knowledge of why I was moved out of Northeast 2?

A Yes, I do.

Q Why was I moved?

A To my knowledge—I mean when I first really became attached to you, working down at the kitchen, the job was to fill coffee pots up and things. One morning, while you was filling up a coffee pot, you had some kind of a seizure or fit and I grabbed you to stop you from getting scalded. A subsequent time you were working down there you had a couple more seizures, about three or four, I don't know how many, and people said that they didn't want you working down there because you might get hurt and cause some conflict.

Q Now, to your knowledge, Mr. Robinson, since I was housed in the same housing unit with you, was I ever able to receive any type of medication or attention for these seizures?

A Not to my knowledge.

\* \* \*

[630]

# CROSS-EXAMINATION

BY MR. ROBBINS:

Q Mr. Robinson, I am Bob Robbins, and I represent Mr. Cooley in this case.

During July and August of 1976 did you ever have an occasion to go down or go to Northeast 1?

A Yes, I did.

Q And for what purpose would you go down there?

A To take food.

Q Did you ever see Mr. Cooley when you were there?

A On occasions.

Q Did you ever see any physical injuries on his person?

A I seen a knot on the side of his face.

Q And, about when was this, if you can recall?

A I can't recall the exact date, because at the time I seen two officers dragging Mr. Cooley on the escalators, you know, and I heard him hollering. I said, "Who's that down there?" The officer said, "Come on." Mr. Cooley said, [631] "Stop hitting on me." When the officer brought him around the corner he hit him up side the head.



Q What did he hit him with?

A The slapjack or slapsticks that they all carry on the sides of their pockets.

Q Do you know where Mr. Cooley was coming from, from your own personal knowledge?

A I don't know where he was coming from.

Q About how long did this incident take place?

A I'd say about as long as it took for you to get up the escalator to another floor, about a minute and a half, something like that coming through the hall.

Q Was there any blood that you saw?

A I didn't see any.

Q And for how many days after that did Mr. Cooley have a knot on his head?

A I didn't see him every day.

Q How many officers were involved in this incident?

A Two that I seen.

MR. ROBBINS: I have nothing further.

\* \* \*

[643] RECROSS-EXAMINATION

BY MR. DRURY:

Q You said a slapstick. Could you define slapstick for the jury?

A Yes, sir. It is a piece of metal, looks like a leather belt about that long.

Q Now, you have your hands approximately a foot apart.

A About this long. You can see the top of it with a piece of strap sticking out of the back pocket of the officers.

Q What do they use it for, to pacify the prisoners?

A They use it to hit the prisoners with.

Q Keep them in line, right?

[644] A Yes.

MR. DRURY: Thank you, no further questions.

\* \* \*

[645] VINCENT WALKER

was called as a witness by and on behalf of the Defendant Ralph Walker and having been duly affirmed was examined and testified as follows:

\* \* \*

[649] DIRECT EXAMINATION

BY THE DEFENDANT WALKER:

Q Sir, would you please state your full name and where you presently reside to the Court, please?

A I am Vincent Walker, presently residing at Lorton Reformatory.

Q How long have you resided there?

A Approximately four years.

Q Uh-huh. Now, are you familiar with an individual by the name of Ralph Walker-El?

A Yes, sir, I am.

Q Uh-huh. And is he in the courtroom now?

A Yes, sir, he is.

Q Would you indicate by pointing to him?

A Right there.

Q What is your relationship to me?

A I'm his brother.

Q Uh-huh. Same father, same mother, that type of brother?

A Right.

Q And, how long have you personally known or been in direct contact with myself?

A Well, I'd say approximately all my life except off [650] and on, maybe like we may have been away from each other like occasions like this here.

Q All right. Now, explain what this deals with so we can be just a brief as we possibly can, I want any testimony that you may have concerning any type of seizures that you have noted through the years that I have had while we have lived together under the same roof or—let me rephrase that.

Have you noted any seizures or blackouts that I have had during the years that you have known me?

A Yes, I have.

Q How frequently have you seen me go through spasmodic changes as far as these seizures were concerned?

A I can't really approximate, how many times that you have been through a situation of this nature, but I can say it has been a whole lot of times that I witnessed these type of attacks take place.

Q Have you ever seen me actually fall out as a result of one of these attacks?

A Once.

Q Now, when did you—where was I when you noted these attacks?

A Most of the time, like it was in bed, you know, like you had been asleep, like I had been asleep. I might wake up in the course of the attacks that you have, you know, you might be jumping in the bed, biting yourself, things of this [651] nature, blood and stuff be on the sheet, you know.

Q All right. To your knowledge does anyone else in our family suffer from epilepsy?

A No, they don't.

Q All right. To your knowledge was I ever taken to the hospital as a result of these epileptic seizures through the years?

A No, you haven't. You know, I don't think—I think you should have been taken to the hospital quite a few times but by being such a large family, a lot of times we didn't have any money to eat, let alone go to the hospital, you know.

THE DEFENDANT WALKER: That will be all the questions for this witness for the time being.

\* \* \* \*

[662] THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

CLIFFORD BAILEY, DEFENDANT,

RONALD COOLEY, DEFENDANT,

RALPH WALKER, DEFENDANT.

Cr. No. 76-735-4

Washington, D.C.

March 14, 1977

The above-entitled matter came on for further trial in open court at 10:00 o'clock a.m. before:

THE HONORABLE OLIVER GASCH

United States District Judge, and a Jury.

\* \* \* \*

[667] THE COURT: All right. Now, the problem the Court has with the defense of duress and coercion in this case is that there is no showing by you or by any other defendant that you turned yourselves in after you made your escape. That is an essential ingredient. For that reason, I don't think I'm going to instruct upon duress or coercion. I don't think it belongs in the case. Bring in the jury.

\* \* \* \*

[668] DR. ARIS KARAS

was called as a witness by and on behalf of the Defendant Walker and after having been duly sworn was examined and testified as follows:

\* \* \* \*

[670] THE COURT: Would you give us your name, Doctor?

THE WITNESS: Aris Karas.



THE COURT: What is your first name?

THE WITNESS: A-r-i-s, Aris Karas.

THE DEFENDANT WALKER: Right.

THE COURT: And, you are a member of the medical profession, a doctor of medicine?

THE WITNESS: Right.

THE COURT: And your specialty?

THE WITNESS: Psychiatry.

THE COURT: And your present assignment is what?

THE WITNESS: Psychiatrist, staff psychiatrist at the United States Penitentiary, Leavenworth.

THE COURT: Leavenworth, Kansas?

THE WITNESS: Right.

\* \* \*

[678] THE WITNESS: The defendant, Mr. Walker, was seen for seizures he claims that they come when asleep. The last time was last Tuesday night. He was told by the cellmates that he is seen shaking and trembling. They put a spoon in his mouth.

A DEPUTY MARSHAL: I don't think some of the jury can understand.

THE WITNESS: Here, I will give it to you.

THE COURT: No, you read it, Doctor. Just start over again. Did some of you not get it?

THE DEFENDANT WALKER: Is all of the jury able to understand, clearly, what he says?

THE COURT: Read it again, would you start over again?

THE WITNESS: The defendant, Mr. Walker, was seen for seizures. He claims that they come when asleep. The last time was last Tuesday night. He was told by the cellmates that he is caught shaking and trembling. They put a spoon in his mouth. He bit on the inside of his mouth. No incontinence, no seizures during the day, well oriented, memory okay, his mother has seizures. If I may, Your Honor, with your permission state something to explain this just towards—

THE COURT: All right.

THE WITNESS: This information I obtained from Mr. Walker.

[679] THE COURT: I understand.

THE WITNESS: He is on Dilantin, 100 milligrams, three times a day. I increased the Dilantin to 100 milligrams, four times a day and put him on Mysoline, 250 milligrams daily.

THE DEFENDANT WALKER: All right.

BY THE DEFENDANT WALKER:

Q Now, from what you have read you have said that I have come to—that I came to you and complained of epilepsy, or that other inmates had seen me shaking in the bed and as a result of what I told you I was put on Dilantin and Mysoline. Now, was I put on Dilantin and Mysoline at the same time or was I put on them at different dates?

A I did not put Mr. Walker on Dilantin, myself. He'd been on Dilantin before, by the out-patient department. He was only referred to me for just, you know, that he had had a seizure, epileptic seizure. They always—most of the—not always, but most of the time they refer a guy who has seizures to me.

THE COURT: All right.

THE WITNESS: To see if he needs further investigation or continuation of treatment.

THE COURT: Now, he asked you the question about Mysoline as well as Dilantin. Did you prescribe Mysoline?

THE WITNESS: I did prescribe the Mysoline. He was [680] on Dilantin by the out-patient department at that time. He was taking Dilantin three times a day and I increased the Dilantin to four times a day as a precautionary measure.

\* \* \*

A I want to make, with Your Honor's permission, one point clear if Your Honor would allow me to?

[681] I did not make a diagnosis of seizure disorder.

THE COURT: All right.

THE WITNESS: Because nobody witnessed it from the staff or from the employees, a seizure.

THE COURT: I see. All right.

THE WITNESS: It was only diagnosed convulsive disorder by history.

\* \* \*

[682] BY THE DEFENDANT WALKER:

Q How many times a day, according to those records, Doctor, was I receiving the Mysoline?

A I put you on one Mysoline daily, 250 milligrams.

Q All right. And do you have a record there about—do you have a record there where I actually received the medication?

A Yes, I think I do.

Q All right. Would you take a look at that record, Doctor, and tell me what that record reflects as far as how many times a day I was actually receiving it?

A Yes, sir. Well, apparently—well, the record I have here of what Mr. Walker was receiving—forgive me for [683] doing that, Your Honor. I have the record. From what the pharmacist was giving to Mr. Walker every week, he was giving him an envelope of Dilantin 28/4. That means four Dilantin a day, 28 tablets a week. I have a record that he gave him 14. Apparently that means that 14 Mysoline for two weeks. Which means that one a day, and yes, that was continued until, of course, until May 1976.

\* \* \*

[688] CROSS-EXAMINATION

BY MR. SCHAARS:

Q Doctor, you just made reference to a medical history. Could you tell the ladies and gentlemen of the jury what the basis is for that medical history, who provides it, if you know?

A The patient.

Q The patient does?

A Yes.

Q You just indicated that there is a portion of that history that asks a question with regard to epileptic seizures [689] on that form.

A Yes.

Q And what is the question that is there, sir?

A This is a form, Form 101-11.A, of the Bureau of Prisons, report of medical history, and there is one question, "Epilepsy or fits." And, it was marked—

THE COURT: What was that question?

THE WITNESS: "Epilepsy or fits."

THE DEFENDANT WALKER: What did he say?

MR. SCHAARS: I believe it is: "Epilepsy or fits."

THE COURT: Epilepsy or fits?

THE WITNESS: Yes.

BY MR. SCHAARS:

Q What is the answer to that question, Doctor?

A No.

Q That is provided by the patient or by the inmate?

A Right, the inmate.

Q What is the date of that history, sir?

A Well, that is August 11, 1973.

Q Now, sir, have you had a time—have you had time since being notified of the requirement that you appear here to review that medical file?

A As a matter of fact, we talked about this with Dr. Jarvis, who is my boss.

Q I'm sorry.

[690] A I discussed this with Dr. Jarvis, who is the chief medical officer at the penitentiary.

Q Now, sir, did you have a chance during the course of your review of that file—

A Right.

Q —to note whether or not there ever was made a medical diagnosis of epilepsy for Mr. Walker?

A There is not medical diagnosis of epilepsy.

Q Now, sir, did you have a chance to, in reviewing that file, to determine whether or not seizure activity on the part of Mr. Walker was mentioned in that file?

A There was mentioned only by history, information obtained from him.

Q When?

A But no seizure witnessed by a staff member, P.A., or—that is a physician assistant, or—

Q Would that include a correctional officer, sir?

A Yes.

\* \* \*



[693] BY MR. SCHAARS:

Q Now, Doctor, in response to some of Mr. Walker's questions you talked about the prescription or the prescribing of medication for Mr. Walker as a result of your contact with him. Why was medication prescribed for him, medication for seizures prescribed?

A Because it is better to prescribe in case of doubt about seizures than not to prescribe.

Q Is what you're saying that it is a precautionary measure, sir?

A Of course.

MR. SCHAARS: No further questions, Your Honor.

THE COURT: Any further questions, Mr. Walker?

THE DEFENDANT WALKER: Yes, I'm going to ask some questions.

#### REDIRECT EXAMINATION

BY THE DEFENDANT WALKER:

Q Doctor, you said that in cases of where—you said that in cases where there is the possibility of a person having seizures it is better to prescribe it for him than not to prescribe it for him, is that what you said?

A That is right.

Q So, in other words that is why the medication, the Mysoline was prescribed for me?

A Well, actually the main medication was Dilantin. You [694] just took Mysoline once a day. It is the minimum dose, which you can take, just one tablet a day.

Q What? 250 milligrams?

A Right.

\* \* \*

[709] RALPH WALKER-EL

was called as a witness by and on his own behalf and after [710] having been duly sworn was examined and testified as follows:

THE DEFENDANT WALKER: Actually, there has been a lot of testimony given in this case, and I want to

try to conclude as briefly as I possibly can by telling the ladies and gentlemen of the jury this:

That as far as the complaints, the complaints that were made in the jail concerning the adverse conditions that existed in the jail from the time of the fall, between July the 11th and August 26, the time that I was actually on the dead lock unit there, that we not only complained orally, collectively as a group in Northeast 1 about the conditions that existed there, but we also complained about complaints in petition form.

Mr. Robinson testified the other day that he had received at least one complaint. In fact, there were numerous complaints, but these complaints were futile and we weren't able to get redress concerning these complaints.

Now, there is one more issue that I want to briefly touch on here and that is the fact that after I was released from the detention facility I did in fact contact the proper authorities. I contacted the FBI on a number of occasions. As a matter of fact I kept a constant rapport with the FBI. I had people who had told me that they had brought this information to my sisters that the FBI said that if they ran down on me they was going to kill me. So, in actuality I was never [711] out of immediate danger. I was never out of immediate threat of losing my life. If I would have given myself up I had this FBI threat to contend with and I also had to go back over to the same jail that I had just left from, and this was the reason that I consequently never turned myself into the authorities. That is my testimony.

THE COURT: Do you have any questions?

MR. DRURY: No.

\* \* \*

#### CROSS-EXAMINATION

BY MR. SCHAARS:

[712] Q Mr. Walker, do you know the names of the individuals in the FBI that you retained this constant rapport with during the course of your escape?

A One of them was an Officer Troy or Fauntroy, or something of that nature. I don't know if that is his exact name or not.

Q When did you call him, sir?

A I called him the second day after I was out, and after that I had occasion to call him on several different occasions.

Q Did you identify yourself at those times?

A Yes, I identified myself.

Q Did you indicate where you were?

A No, I didn't indicate where I was.

Q Did you tell him that you were going to surrender yourself?

A I told him that I would surrender myself if I wasn't being subjected to the same conditions and put on the same penitentiary that I had just left from.

Q How many days did you call this gentleman?

A I don't know. I called him two or three different times during the period that I was in the streets.

Q You were out until December 13th, is that correct?

A I think that is the date.

\* \* \*

[715] Q Now, sir, where did you make the phone call from to the FBI?

A I made the first one from a public phone booth.

Q How did you know what number to call, sir? Did you look it up in the directory?

A I looked it up in the directory.

Q Did you ask for anybody in particular at the FBI?

A No, I just asked to speak to someone on the warrant squad or someone who was connected with escapees.

Q Would the name Fluharty, does that ring a bell? Would that name Fluharty ring a bell with you as the name of a gentleman you may have spoken to, if you spoke to someone?

A Sounds halfway familiar.

Q Exactly what did you tell him, sir?

A I explained to him that I was one of the four gentlemen that had escaped from the detention facility on August 26th, because of the conditions that existed there.

I explained to him how terminal the conditions were there and asked him was it any kind of way that I could get with him to make some type of arrangements as far as turning myself in, if I wouldn't have to go back to the detention facility at 1901 D Street, Southeast and also asked him had [716] there been anything issued concerning, or had he told a man named Earl Berman, whether or not the FBI—or, did he have knowledge that anybody at the FBI had told Mr. Earl Berman that he had intended to kill me if I was arrested.

Q Who is Earl Berman, sir?

A Earl Berman is a personal friend of mine.

Q Are you saying that Mr. Berman told you that the FBI was going to kill you?

A Yes, he did. He didn't tell me, but he told my sister and my sister related this information to me.

Q So, you heard it third-hand?

A Yes, I heard it second-hand.

\* \* \*

[717] BY MR. SCHAARS:

\* \* \*

Q Now, sir, when exactly was the first time that you called [718] Agent Fluharty or someone by the name of Fauntroy with the FBI?

A The second day I was out.

Q Would that be on the 28th, sir?

A That would be on the 28th.

Q Do you recall about what time of day it was, sir?

A I don't know. It was in the early morning hours. I would say have to be between 4:00 and 6:00.

Q A.M., sir?

A A.M.

Q And, do you know long your conversation lasted at that point?

A It had—no longer than a three-minute duration at the most.



Q And you did identify yourself?

A I did identify myself.

Q When was the second time that you spoke to somebody from the FBI?

A Approximately a week and a half later.

Q Would it be fair to say that that would be about ten days later, sir?

A I think that would be fair.

Q To whom did you speak at that time?

A To the same person.

Q Did you ask for him at that time, sir or—

A Yes, I did. I had called the FBI building previous [719] to that, told them that I was going to call.

Q Do you recall what time of day you called at that time, sir?

A It was about 2:00 in the afternoon.

Q How long did your conversation take at that time?

A No more than a three-minute duration then.

Q Did you identify yourself, sir?

A Yes, I identified myself.

Q At that time did you indicate to Agent Fluharty that you were going to turn yourself in?

A I indicated to him if he could work out the conditions for which I wanted to turn myself in, I would turn myself in.

Q What were the conditions?

A Those conditions would be the fact that I wouldn't be harmed by any agent of the FBI, I wouldn't be taken back to the detention facility, 1901 D Street, Southeast.

Q Did there come a time that you spoke to somebody from the FBI again?

A Yes, there did.

Q When was that, sir?

A I would say that would have been about a month later.

Q Would that be mid-October, sir, or late October or mid-November? I'm sorry, I don't mean to confuse you.

A It was in—it was in October. I don't know whether it was late or—it was around—it was in October, around, [720] between the middle and first part of October.

Q Now, whom did you speak to at that time, sir?

A The same guy.

Q Agent Fluharty?

A I assume that is his name.

Q It was somebody on the warrant or escape squad that you were speaking to each time, sir?

A I assume that he was.

Q Did you ask specifically for somebody on that squad the first time you called?

A The first time I called I did.

Q And the second time, did you ask for the same agent by name?

A Yes, I did.

Q And the third time, did you ask for the same agent by name?

A Yes.

Q Now, sir, on that third occasion did you offer to come down and turn yourself in?

A Under certain specified conditions.

Q The same conditions as you have indicated on the two prior occasions?

A The very same conditions.

Q Now, sir, did there come a time when you called the FBI again?

[721] A To my recollection, no.

Q So, from the beginning to the middle of October, whenever that third phone call occurred, to December 13th, you had no contact with the FBI?

A To my recollection, no.

Q Did you call any other law enforcement agency during that period of time, sir?

A No, I didn't.

Q Did you ever appear in any court of the District of Columbia to turn yourself in during that period of time?

A No, I didn't.

Q Did you ever talk to a minister or a priest or any kind of religious leader in an effort to turn yourself in during that period of time?

A Yes, I did. I'm a minister myself.

Q You are, sir? Did you speak to another member of your faith, a minister?

A Yes, I did.

Q To whom did you speak, sir?

A I don't want to give his name at this time. I don't want to incriminate him as far as anything, as far as my escape and everything is concerned. You'd have him up here for a charge.

Q Did you tell that gentleman that you were going to turn yourself in?

[722] A I told him—I had discussed turning myself in with a member of the FBI and I thought very seriously about it, if the conditions that I had specified to you could be worked out.

Q When you spoke to this gentleman from the FBI, did he ever indicate that he would agree to those conditions?

A No, he didn't.

Q Did he indicate that he would agree with anything?

A He indicated that he would agree that I wouldn't be harmed by any members of the Federal Bureau of Investigation, but that he couldn't agree that I wouldn't be taken back to the detention facility, 1901 D Street.

Q So, he did promise you that the FBI wasn't going to hurt you?

A Yes, he told me that the FBI wouldn't hurt me.

Q Did you have any contact with a warrant squad officer of the District of Columbia Department of Corrections during your period of elopment?

A Not to my recollection, unless he is part of that warrant squad.

MR. SCHAARS: I have no further questions, Your Honor.

[724] MR. SCHAARS: In any event, Your Honor, the testimony would be essentially a denial of the allegations that have been made with respect to his conduct as well as a brief description of some of the regimen which he has established at the new detention facility with regard to issuance of slapsticks and other paraphernalia by correctional officers.

The second individual, Captain Dickinson, the various charges have been made and he would basically deny the allegations that have been made as I would put them to him, one at a time.

The third rebuttal witness would be Agent Fluharty of the FBI, a gentleman whose name just came up during the course of Mr. Walker's testimony this afternoon. I have not spoken to Agent Fluharty. I know he is on the squad which does investigate escapes within the District of Columbia, and would seek leave of court to talk to Agent Fluharty before he takes the stand. That is the nature of the rebuttal, but in view of the Court's statement this morning with regard to instructions, and that is an instruction on duress will not be given, I am wondering whether Major Long and Captain Dickinson's testimony are really pertinent at this point. It depends upon the extent and scope of argument.

[725] THE COURT: Well, the Court reached that conclusion after having written a fairly extensive instruction on the subject of duress and coercion and having studied the cases over the weekend. The Court concluded that in order to avail one's self of the defense, one must notify the authorities of his whereabouts or turn himself in, that one is not exonerated by affecting an escape regardless of the conditions, unless one takes that action. That is the ruling of the Court. It is for that reason that I made the observation that I made earlier.

\* \* \* \*

[728] WILLIAM FLUHARTY

was called as a rebuttal witness by and on behalf of the Government and after having been duly sworn was examined and testified as follows:

#### DIRECT EXAMINATION

BY MR. SCHAARS:

Q Sir, would you please state and spell your name?

A Yes, my name is William Fluharty, III, F-l-u-h-a-r-t-y.



Q Where are you employed, Mr. Fluharty?

A A special agent with the Federal Bureau of Investigation, assigned to the Washington Field Office.

\* \* \*

[730] Q Now, sir, were you ever, during the course of August and September, August to the end of September of 1976 assigned the case styled: Ralph Walker?

A I was not particularly assigned to that case. It was assigned to my partner, Agent Joel Dean, but I did work with him on the case off and on, along with other cases.

Q Did you ever have any contact with an individual whose name is Ralph Walker?

A Just on one particular day when my partner and I and several other agents placed him under arrest.

Q Sir, I'm going to ask you some specific questions with regard to telephone calls.

Do you recall whether or not you received a telephone call from someone whom identified themselves as Ralph Walker on or about the 28th of August of 1976?

A I did not receive a phone call from Ralph Walker.

Q How are you certain of that, sir?

A For one thing, I would have remembered. It would have been an escape case. I would—the name I would know, and the escape thing, I think was what date?

[731] THE DEFENDANT WALKER: Your Honor, I ask the witness to confine himself to the question, please.

THE WITNESS: I was on vacation at the time of the escape. If I could have a specific date, I may have been in Rehoboth.

THE COURT: The date of the escape was the 26th of August.

THE WITNESS: On the 26th I was in Rehoboth Beach, Delaware.

BY MR. SCHAARS:

Q I'm going to ask you a question with regard to the period, ten days after the 28th of August, 1976.

Do you recall whether or not you received a phone call at about 2:00 in the afternoon on that date from a gentleman known as Ralph Walker?

A I did not receive a phone call.

\* \* \*

[732] Q Now, sir, you have talked about telephone messages and referrals. At any time during the time period I have just spoken of that would be the 28th of August through the end of October of 1976, do you recall whether or not you received any telephone message form, the yellow form that you referred to, indicating that a Mr. Ralph Walker had called you?

A I did not get any messages concerning a Ralph Walker.

Q Now, sir, if a Mr. Ralph Walker called you during that period of time, what would you have done with the message?

A I would have immediately notified my partner, Mr. Joel Dean, who's in charge of the case.

\* \* \*

[733]

JOEL DEAN

was called as a rebuttal witness by and on behalf of the Government and after having been duly sworn was examined and testified as follows:

# DIRECT EXAMINATION

BY MR. SCHAARS:

Q Sir, speaking in a loud and clear voice, would you please give your name and spell your last name?

[734] A My name is Joel Dean. The last name is spelled D-e-a-n.

Q Where are you employed, Mr. Dean?

A I am employed with the Federal Bureau of Investigation, Washington Field Office.

Q How long have you been with the Washington Field Office, sir?

A Approximately six and one-half years.

Q How long have you been with the Federal Bureau of Investigation, sir?

A Correction, six and one-half years with the Federal Bureau of Investigation, approximately five and a half years here in Washington.

Q Now, sir, directing your attention to August of 1976. Do you recall what your duty assignment was or your squad assignment was during that time?

A At that time I was working bank robbery investigation, escape, federal prison investigations.

Q Did there come a time during the month of August, 1976, that you received an assignment to investigate an alleged escape of a gentleman by the name of Ralph Walker?

A Yes, I did.

Q Were you the agent assigned the case?

A I was assigned the case of Ralph Walker upon his escape.

[735] Q Now, sir, during the course of being assigned to an escape case or any case with the FBI, if contact is made with a witness or with the defendant, or there is an investigative lead obtained by the Federal Bureau of Investigation during a case, what if any knowledge would you, as the case agent, have of that?

A All leads in regard to Ralph Walker, regardless of what state, even if it were out of the country, would be funnelled through me as being the case agent.

Q Now, sir, during the period of your assignment as the case agent in that case, did you ever receive any messages from anyone within the FBI or any other law enforcement organization that a gentleman identifying himself as Ralph Walker had contacted the FBI?

A I did not.

Q Sir, did you retain your assignment in that case through the actual apprehension of Mr. Walker?

A That is true. I still have it.

Q Sir, if I said that on August 28th of 1976 Mr. Walker called the FBI and spoke to somebody there indicating he would turn himself in under certain conditions, would you have known of that, if that happened?

A I would have.

Q And did you ever learn of that, sir?

A I did not.

[736] Q I ask you the same question with regard to a time period some ten days later. Were you ever advised that somebody called the FBI under that sort of situation?

A I was not advised.

Q Now, sir, I ask you the same question with regard to the first and 15th of October of 1976. Did anything like that happen?

A Not to my recollection.

Q Was anything brought to your attention, sir?

A No, sir, it was not.

Q Now, sir, if one calls the FBI in the early morning hours, let's say 4:00 to 6:00 a.m. in the morning, and asks specifically for an agent, how if at all, is that agent contacted?

A First of all let me clarify this point. If they called the FBI, possibly they might get the headquarters, they determine whether or not it is a violation type case. They would transfer over to the Washington Field Office. We have night supervisors on duty. The night supervisors would take the necessary message, make a record of it, notify the case agent at home, depending upon the nature of the message coming in.

Q Did you ever receive such notification with regard to a phone call from a Ralph Walker in this case?

A I did not.

\* \* \*

[738] MAJOR WILLIAM LONG

was called as a rebuttal witness by and on behalf of the Government and after having been duly sworn was examined and testified as follows:

#### DIRECT EXAMINATION

[739] BY MR. SCHAARS:

Q Sir, would you please state your name?

A My name is Major William Long.

Q Where are you employed, sir?

A With the District of Columbia detention facility.



Q Where is that located, sir?

A 1901 D Street.

Q How long have you been with the District of Columbia Department of Corrections, sir, if that is where you are employed?

A I am in my 13th year, 12 years 5 months.

Q Now, sir, will you describe briefly the nature of your assignment and your responsibilities at that facility?

A Presently I am the rank and uniform correctional supervisor. My responsibility is managing the three correctional shifts at the detention facility.

\* \* \*

[741] Q Now, sir, I will begin again about six weeks prior to August 26, 1976, did you in the company of those two gentlemen come upon Mr. Clifford Bailey and indicate to him that if he testified in a specific criminal case in the Superior Court of the District of Columbia that you would see that he was killed or was left hanging in a cell?

A No, sir.

Q Did you, by yourself, on or about that time communicate a threat to somebody by the name of Clifford Bailey?

A No, sir.

Q Now, sir, in your experience in the institution have there been times when you have come into contact from your recollection with a gentleman by the name of Clifford Bailey?

[742] A Yes, sir.

Q Have you ever, in your contact with Clifford Bailey, threatened him?

A No, sir.

Q Sir, does the name Brad King mean anything to you?

A I have heard it referred to recently. It doesn't really ring a bell with me.

Q When you mean recently, do you mean within the last week?

A Yes, sir.

Q In August of 1976 and in July of 1976 and in June of 1976, did that name mean anything to you, sir?

A No, sir.

Q Do you know now anything about a case involving Brad King?

A No, sir.

Q Did you ever communicate threats, either to Mr. Bailey or Mr. Walker or Mr. Cooley concerning possible testimony in a Brad King case?

A Not in the Brad King case or any case.

Q Now, sir, is it part of your job at the District of Columbia Department of Corrections to investigate complaints as they are referred to you by Mr. Robinson?

A Yes, sir.

Q During the course of an investigation—let me give [743] you a hypothetical, sir, if I may. If an inmate complained of brutality on the part of a correctional officer and word of that complaint were referred to you for investigation, what would you do?

A I would investigate the matter, sir.

Q What does investigation entail, sir?

A I would conduct an inquiry by either delegating a shift captain, who is responsible for the day to day operation, possibly more than one member of a committee, and we would interview the inmate and officers who had any contact with the inmate or had any knowledge of whatever incident it may be that we were looking into.

Q Do you have any recollection of investigation complaints—let me rephrase that, if I may.

Complaints of a gentleman by the name of Ralph Walker during the June to August period of 1976?

A No, sir.

Q Do you have any recollection of investigating complaints of a gentleman by the name of Clifford Bailey in that same time period?

A No, sir.

Q I would ask you the same question with regard to Ronald Cooley.

A No, sir. I don't recall it.

\* \* \*

[747] CROSS-EXAMINATION

BY THE DEFENDANT WALKER:

Q You identified me, you know who I am?

A I recognize your voice. I didn't recognize you before.

Q Right. Do you recognize this, Major Long?

A Yes, I do.

Q What is it?

[748] A It looks like a log book.

Q Would this type of log book be kept in each housing unit?

A Yes, sir.

Q And to your knowledge would this log book contain the daily reports or a concise summary of what happens in the cell block every day?

A It should contain a summary, yes, sir.

Q And, in your capacity as the Major at that particular institution at the detention facility at 1901 D Street, do you ever read or go through this log book?

A Occasionally, I go through the log book, yes, sir.

Q Now, were you aware of the conditions that existed there in the Northeast 1 housing unit from July 11th until August 26th, 1976?

MR. SCHAARS: Objection, Your Honor. It is beyond the scope of direct examination. This gentleman has been available for a week. If Mr. Walker had wanted him in his case—

THE WITNESS: I am aware of certain conditions, Mr. Walker, if you could be specific.

BY THE DEFENDANT WALKER:

Q All right. Let me rephrase my question to come in line with Mr. Schaars' testimony. Have you ever received any complaints concerning the conditions that existed in the [749] Northeast 1 housing unit?

A During the course of my duties I have received complaints concerning showers, food, sick call, maybe some other complaints and I have, as you well know, made occasional trips to the unit, and took action within my capacity at that time.

Q All right. Have you ever received any complaints concerning burning and smoke inhalation and that type of thing?

A Yes, I have.

Q All right. Were any of these complaints written complaints or petitions?

A I do not recall any written petitions, Mr. Walker.

Q All right. What action, if any, did you take concerning the complaints of the burning and smoke inhalations?

A I tried to correct those deficiencies that may have existed within the unit wherein an inmate may not have gotten his linen and in accordance with our daily schedules—

Q I'm not speaking about the linen, Major Long. I'm speaking about the burning and smoke inhalation. I'm asking you what, if anything, did you do to correct those deficiencies as far as the burning and the smoke inhalation were concerned?

A Well, within my capacity I had instructed all inmates going into the unit be searched and matches be withheld and yet there is still—would still be some burning and smoke within the unit.

\* \* \*

[752] [BY MR. ROBBINS:]

Q Do you remember how many such investigations you made during July and August of 1976?

A No, sir.

Q Any rough idea?

A No, sir. During the last weeks of June and the first weeks in July I was on a vacation for three weeks.

Q After that?

A Dozens. Routinely, it is on short notice. I don't [753] have an average. To my peculiar position, I may wind up with two or three complaints a week or it may be two or three a month.

Q Is there any sort of committee to set up to investigate those complaints?

A Well, we have various avenues of redress for the inmate. An inmate can make a complaint to any staff member that he deems appropriate. He doesn't have a



chain of command or by any one person that he has to direct it to in order to bypass circumvention of a complaint, by correctional officers. There are mailboxes installed in the housing unit that an inmate may put a written request in a sealed box, and this is picked up by, there again, a correctional officer, but not anybody working in a particular unit.

Q So, there is no standard way of making such a complaint?

A Case workers, social workers, visitor service, legal aides, telephone calls to their attorney, et cetera.

\* \* \* \*

[755] [BY MR. DRURY:]

Q Were you responsible or did you take responsibility for the escape that occurred on August the 26th?

[756] A No, sir.

MR. SCHAARS: Objection, Your Honor, this is not relevant to anything, whether this gentleman has responsibility or anyone else does. It is not pertinent to this case.

THE COURT: I'm inclined to agree that that is not. If you have something you think is material—

MR. DRURY: Your Honor, I believe that it goes to the possibility of bias on the testimony of Mr. Long, whether he was found irresponsible in his operations as a result of the escape has a pertinent part in the question of bias or prejudice in his testimony and I believe that I should be allowed to inquire into it.

THE COURT: Well, I question the relevance of it in view of the ruling I have previously made.

MR. DRURY: Then, do I understand that Mr. Schaars' objection is sustained?

THE COURT: Yes.

BY MR. DRURY:

Q Now, you have looked down at defendants' table and have been unable to identify Clifford Bailey, is that correct?

A If I may—

Q Did you not get a good look at it the last time?

A I know Mr. Bailey. Okay. I'm looking at Mr. Bailey right now.

Q You are?

[757] THE DEFENDANT BAILEY: I know you know me.

THE WITNESS: I know Mr. Walker. I know Mr. Cooley, but when I looked down, I did not recognize the gentleman.

BY MR. DRURY:

Q You weren't—just weren't able to identify them at that standpoint?

A That is correct. I would hope that you would want my honest opinion as I saw it at that point.

Q I see. But you knew Clifford Bailey as an inmate of dead lock, didn't you?

A Yes, yes, sir, right.

Q And, did there come a point in time in June or July that you discovered that one, Clifford Bailey, was on dead lock?

MR. SCHAARS: Your Honor, I object. It is beyond the scope of direct examination. Again, this gentleman has been available for Mr. Drury, Mr. Walker and Mr. Robbins. He has been here a whole week.

THE COURT: When a witness is called on rebuttal normally he is subject to cross-examination within reasonable limits. I don't know in what direction the questioning is going to take—

MR. DRURY: It is not going to go very far afield.

THE COURT: There is a very narrow scope left of this case.

[758] BY MR. DRURY:

Q Did you in June or July, I understand from your testimony that the latter part of June and the early part of July, you were on vacation, but did there come a point in time in the summer of 1976 that one, Clifford Bailey, was on dead lock?

A I don't recall when. I'm sure on August 26th, I was aware that he had been on dead lock.

Q Did you ever become aware of the fact that an inmate on dead lock had filed a civil action against one of your police officers?

A No, sir.

Q Do you know now that Clifford Bailey has a civil action in Superior Court against Mr. Graves, an officer of your station?

A I am aware of that now.

Q When did you first learn of that, sir?

A I don't recall the exact date. It did not concern me directly. I did see a copy of a writ I think, some week or two weeks ago. Another staff member that was in the facility, Captain Dickinson, I believe.

Q Was this a complaint filed by Mr. Bailey against Mr. Dickinson?

A I don't recall, sir.

Q But you did become aware of it at some standpoint and [759] are you stating that it was August 26th, the date of the escape that your attention was drawn to the name of Clifford Bailey as being one of the inmates who had escaped?

A Yes, sir.

Q I see. Now, do you ever sit on the Adjustment Board?

A Occasionally, when Mr. Robinson is absent, I would fill in as chairman of the Adjustment Board, yes, sir.

Q Do you pay particular attention to the cases that come before you?

A Certainly, sir.

Q Especially if they concern escape matters or matters of that nature, is that right?

A On the Adjustment Board, I would pay strict attention to the incident at hand.

Q Wouldn't you also pay strict attention to any assault that was against a guard, is that correct?

A That is.

Q And any assault that might be, alleged by an inmate, that was perpetrated by a guard?

A I would think so, yes, sir.

\* \* \* \*

[768] MR. DRURY: Your Honor, I would move for a motion, for judgment of acquittal at this time.

MR. ROBBINS: I join in.

MR. DRURY: On various grounds. I am sure the Court is desirous of getting two arguments this afternoon. If so, Your Honor, I would like to make a series of motions. I would feel much more comfortable if I could make them at the bar as opposed to at the bench.

THE COURT: All right.

MR. SCHAARS: I take it, with the jury excused, is that what he is talking about?

[769] THE COURT: Yes.

(In open court:)

THE COURT: Ladies and gentlemen, step into the jury room, briefly. The Court understands we have taken all of the testimony we're going to take. We just have some questions of law to determine.

(Whereupon, the jury retired to the jury room and the following proceedings were had:)

MR. SCHAARS: Your Honor, may I excuse all of my witnesses who are still here?

THE COURT: The Marshal will excuse your witnesses.

MR. SCHAARS: Thank you, Your Honor.

MR. DRURY: Your Honor, first of all, I believe that this morning's events in which Mr. Walker collapsed at the lecturn, I believe that there should be notice on the record that this did occur and perhaps a description given by perhaps the Court or stenographer or the prosecutor.

I believe that it is necessary, Your Honor, as a basis for the motion that I made immediately after the Court resumed at the—approximately, no, I'm sorry, about 10:45 or 11:00 o'clock. I want that on the record. I did move, as the Court is well aware of, for a mistrial as far as Mr. Clifford Bailey goes.

Secondly, Your Honor, I would like the record to show that yesterday or on Saturday at approximately 10:45 [770] or 11:00 o'clock, Mr. Robbins and I submitted an



instruction on duress to the Court and I assume that the Court did review it.

THE COURT: Yes.

MR. DRURY: And did reject it, based on the statements that the Court has made throughout. Secondly, Your Honor,—or, thirdly, I believe that the Court's ruling this morning and throughout the day that there will be no duress instruction.

THE COURT: The specific reason for that, Mr. Drury is that as a condition for arguing that to a jury there must be a showing that the man who escaped or who left custody turned himself in. And failure to turn one's self in precludes the arguing of that point of law in the Court's judgment.

MR. DRURY: Yes, Your Honor. I understand that, but I believe that in this case, even though the Court were to accept that as the established law in the District of Columbia, I respectfully submit there is no precedent for it in the District of Columbia and I assume the Court has gone outside and sought other authority.

THE COURT: There is no case in point.

MR. DRURY: I believe, also, Your Honor, that the issue in this case and I believe it was last Thursday, I argued for the distinguishing of this case from the four other cases that have been cited in the Government's memorandum, but I do not wish to rehash those arguments again. The Court is [771] well aware of them. But, I believe this, Your Honor, a duress instruction is appropriate as to my client, because the testimony has shown that there was and it can be interpreted by the jury, that there was a continuing duress on the part of my client.

First of all, Your Honor, duress occurs at the time the man makes the mental decision to leave the jail. The testimony in this case, Your Honor, showed as far as Clifford Bailey is concerned, that he got out of his cell in the morning. He looked out the window. The realization of everything that had gone through the summer of 1976 came upon him and he left, Your Honor. He left and at that point the defense of duress comes into being. I believe, also, during the period of time that he was—he

left the jail, there is sufficient testimony for the Court to give an instruction that this man realized that any return to the jail, Your Honor, any return to any type of law enforcement authority, would submit him to the same type of punishment that he had endured throughout the summer and that any surrender in itself would in no way alleviate the problems that this man had encountered during the summer of '76. Accordingly, I urge an instruction on duress.

THE COURT: I don't think it is appropriate under these circumstances of this case. The Court well recalls the big jailbreak case, which was tried in this courtroom involving Bridgeman and others. The same argument was made and at that [772] time, you may recall, maybe you don't recall, Judge Bryant, my colleague, had before him for consideration the whole issue of conditions at the jail. The reason for the insurrection that occurred down there. Counsel, who presented that were public defenders. Those people were available to these people had they wished to take the step. They didn't take it. So they forfeited the opportunity of making the duress argument.

MR. DRURY: This was in the Bridgeman case, Your Honor?

THE COURT: No, your people. Your people.

MR. DRURY: Are you saying, Your Honor, that they should have contacted the public defender service?

THE COURT: Certainly. That was an alternative. They are concerned about the conditions of the jail. They are concerned about what may have been done to them. They're concerned about retribution down there. Those are things that Bryant took care of when the matters were brought to his attention. They weren't brought to my attention in this case.

MR. DRURY: My client was not so concerned about the conditions of the jail. He was concerned—our defense has been, distinctly different from the defense in the Bridgeman case.

THE COURT: Yes.

MR. DRURY: It has been based on a personal animosity caused by this man's assertion of his constitutional rights. [773] His right to an attorney. His right to file

civil suits against the appropriate authorities. Threats, that I believe have—

THE COURT: Mr. Drury, I'm not going to argue the matter with you. I hold you in high regard as a member of the Bar. For that reason I asked you to take this appointment. I know it is a difficult appointment for counsel to take, but because of the feeling I have for your legal ability, I did appoint you in this case. I know sometimes lawyers disagree. I disagree with you about the applicability of the defense in this particular case.

MR. DRURY: I understand.

THE COURT: You may be right. I may be wrong. I haven't been right in all my judgments. I don't know any judge who is and if I am wrong, the Court of Appeals can correct me.

MR. DRURY: Yes, Your Honor. I wanted it on the record, though, Your Honor, that I have made this motion.

THE COURT: Yes, I understand you made the motion. You are renewing the motion at this time.

MR. DRURY: Does this prohibit counsel from arguing that there was no specific intent to leave the jail, that the act—

THE COURT: You don't need specific intent. This is a general intent offense, and I will so instruct the jury.

MR. DRURY: Well, will the Court allow counsel the leeway to argue that there was no, I believe the indictment does [774] charge willfully and voluntarily—

MR. SCHAARS: Willfully, not voluntarily, Your Honor. It says willfully.

THE COURT: As was pointed out to one of the cases to which the Court's attention is drawn, a judge instructed specific intent was the law of the case, and for that reason a general intent instruction was regarded as being wrong, but not plain error. You may remember the case.

MR. SCHAARS: I believe that is the Woodring case.

THE COURT: I think that is a Fourth Circuit or Fifth Circuit case. In any event, I'm not going to make that error. The intent involved in this case, the intent is general intent, and the indictment does charge unlawfully and willfully free from custody.

MR. DRURY: Your Honor, I understand the Court's instruction. Thank you. I would like the record to show though, I have a copy of my proposed instructions that Mr. Robinson and I submitted and I would like to submit this at the close of the case, knowing that—

THE COURT: Oh, yes, that will be filed and rejected, but because of the fact that—

MR. DRURY: I think the Court has my original copy.

THE COURT: Yes, I do.

MR. DRURY: Could that be made part of the record? May I have that for my document?

[775] THE COURT: Certainly.

MR. DRURY: Does the Court have a copy?

THE COURT: I thought I did, Mr. Drury.

MR. DRURY: I will make a copy of it, Your Honor.

THE COURT: Wait a minute.

MR. DRURY: Thank you.

THE COURT: Yes, thank you.

This will bear the Court's notation, denied as submitted.

MR. DRURY: Okay.

MR. ROBBINS: Your Honor, rather than restating Mr. Drury's argument, I would just like to go on the record as joining in those requests and motions and also at this time make a motion for judgment of acquittal and submit it to Your Honor.

THE COURT: All right. Submitted and denied, Mr. Patterson, for the record.

THE DEPUTY CLERK: Yes, Your Honor.

THE DEFENDANT WALKER: Your Honor, I'd like to join in on Mr. Drury's motion for acquittal. However, I have one thing to say here. I think that in using analogous cases, or analogous case circumstances as far as the criteria is concerned, the Court is now using Lovercamp, which set forth five conditions—

THE COURT: The Lovercamp case is—

[776] THE DEFENDANT WALKER: Five conditions for the defense of—

THE COURT: You mean the California case?



THE DEFENDANT WALKER: People versus Lovercamp.

MR. SCHAARS: That is it.

THE DEFENDANT WALKER: Right. And those five conditions that were set forth, I feel that I personally have met all five of these conditions as far as the duress defense is concerned.

I definitely feel I was shown with a specific threat of death and substantially bodily injury in the immediate future through the showing of the attacks, as far as my epileptic seizures were concerned, and as far as the fires and the smoke inhalation were concerned. I feel that I have also shown that there is no time for complaint to the authorities for that there exists a history of futile complaints, which may result in some complaints seeming illusory.

Now, I think that I have shown that I did complain to the authorities on numerous, different occasions and wasn't able to get adequate medical care, and wasn't able to get any type of relief so far as the smoke inhalation was concerned. I tried to exhaust all of my administrative remedies before coming into the court, and consequently, there was no time for my reporting to the courts because the dangers I felt were imminent, as well as terminal.

[777] Now, I think that I showed that there was no evidence of force or violence used toward any prison personnel or any other innocent persons in the escape.

Number five, as far as the prisoner immediately reporting to the proper authorities when he has attained a vicinity of safety from the immediate threat, I think I showed I did that. Now, whether or not the jury accepts the fact that my testimony concerning the fact that I did report to the proper authorities, I feel that that is a case for the jury to decide and not a case for Your Honor to decide himself, the fact that I had met the criterion that were set forth in the Lovercamp case. I move at this time that Your Honor do give an instruction on duress for the Defendant Walker-El.

THE COURT: Well, Mr. Walker, taking your testimony in the light most favorable to you, you did not tell

them where you were. You did not tell them from what number you were calling. You gave them no means whereby they could pick you up and take you into custody nor did you get in touch with the public defender or any other institution that could have filed your petition and sought the relief that you sought. That is why I'm taking the action that I am taking.

THE DEFENDANT WALKER: All I can say is that—

THE COURT: I want to say this to you, Mr. Walker. The Court regrets that your life has been lived as you have lived it. You have shown that you are a person of considerable [778] mental ability. It is regrettable that you didn't get an education, that you didn't equip yourself in the law or some other profession which you certainly have the mental attributes.

THE DEFENDANT WALKER: Your Honor, I would just like the Court to know my objection.

MR. SCHAARS: May I inquire?

THE COURT: I do.

MR. SCHAARS: May I inquire of counsel for the defense as well, the nature of the instruction to be given on duress and the conditions of the jail, I think this will be of some assistance in argument.

THE DEFENDANT WALKER: What did you say, Mr. Schaars?

MR. SCHAARS: I will repeat that for Mr. Walker. I would like to know what the Court intends to instruct the jury with regard to conditions at the jail and the defense of duress.

THE COURT: I am going to instruct the jury pretty much the way I instructed them in the Gorham-Bridgeman case, on—

MR. SCHAARS: That is, that conditions in the jail are not pertinent, is that it, Your Honor?

THE COURT: Had these men notified the authorities or the public defender in an effort to surrender under conditions that might have been arranged by the public defender, then I would have permitted the duress and condition argument. In fact, I have here an instruction, which I drew up very [779] carefully with that in mind,

but I realized that at the end of which I was calling upon the jury to make a finding that they couldn't make, that is to say that these men had turned themselves in and that is a prerequisite to the assertion of the defense of duress, or coercion. So, for that reason I decided that I had to assume the responsibility myself.

MR. SCHAARS: I understand that, Your Honor. At the beginning I asked whether or not the Court intended to instruct counsel and the respective defendants in this case as to the prohibition for arguing jury nullification. That is the jury may totally disregard the instruction.

THE COURT: I asked the jury to follow the Court's instruction. Juries don't always do it.

MR. SCHAARS: I'm not asking for that instruction. I know the Court does that. I'm asking for an instruction to counsel at this time out of the presence of the jury that may be prohibited from arguing that, based upon the ruling of law of this Court, I'm suggesting it is improper for counsel to try and get around the instructions by arguing in effect that they should ignore everything that you have said.

THE COURT: No, I don't think counsel is going to do that. I don't think Mr. Walker is going to do that.

MR. SCHAARS: I'd like a strict ruling from the Court that that is not going to be permitted. That is all. Jury nullification has no dignity in the law.

[780] THE COURT: That is what South Carolina tried to do at the time of the Civil War, found out what happened to it. They don't permit that in this court.

MR. DRURY: Have you seen the Government's instruction in this matter?

THE COURT: Yes. The Government submitted a series.

MR. DRURY: Have you modified those or are you going to include those?

THE COURT: Well,—

MR. DRURY: Verbatim?

THE COURT: I don't think I have ever given any instructions verbatim that were submitted to me by counsel. I don't recall such a case.

\* \* \*

[781] Now, I would, with respect to proposed instruction Number 2, tell the jury what the essential elements of the offense are, which is the second paragraph of the instruction. I do not read the indictment at the time of the charge.

\* \* \*

[790] THE COURT: Now, ladies and gentlemen of the jury, it becomes the Court's responsibility to charge you as to the law in this case.

\* \* \*

[799] Now, ladies and gentlemen, I wish to instruct you about a concept we call intent. It is important in any criminal case.

Intent means that a person had the purpose to do a thing. It means that he made an act of the will to do the thing. It means the thing was done consciously and voluntarily and not inadvertently or accidentally.

Some criminal offenses require only general intent, and that is true, ladies and gentlemen, of the offenses charged in this case.

Where this is so, and it is shown that a person has knowingly committed an act which the law makes a crime, intent may be inferred from the doing of the act.

Now, intent ordinarily cannot be proved directly because there is no way of fathoming or scrutinizing the operations of the human mind. But you may infer as to the defendant's intent from the surrounding circumstances.

[800] You may consider any statement made and act done or omitted by a defendant, and all of the facts and circumstances in evidence which indicate his state of mind. You may infer that a person ordinarily intends the natural and probable consequences of acts knowingly done or knowingly omitted. However, you should consider all the circumstances in evidence that you deem relevant in determining whether the Government has proved beyond a reasonable doubt the defendant acted with the requisite intent, in this case general intent.

Now, we say that an act is done willfully if done knowingly, intentionally, and deliberately. So much,



ladies and gentlemen, for the general instructions in the case.

I will now turn to the indictment, which you may take to the jury room with you, and I will give you each of the essential elements which constitute the offense which is charged in this indictment.

Now, with respect to each of the defendants who is on trial in this case the Court instructs you that defendants convicted either in this federal court or in the Superior Court of felonies, or in the federal court throughout the country are committed to the custody of the Attorney General of the United States. This is a general practice and the Court will take judicial notice of it and instruct you accordingly.

Prisoners, such as two of the prisoners in this case, [801] defendants in this case who are convicted in another jurisdiction and who were in the custody of the Attorney General, were brought to this jurisdiction as the documentary evidence shows, because they were summonsed as witnesses by another defendant in a proceeding then pending in the District of Columbia court. They are still under the custody today of the Attorney General regardless of how they happened to be brought into the District of Columbia Jail.

Now, the essential elements of the offense charged in Count One against the defendant, Clifford Bailey, each of which the Government must prove beyond a reasonable doubt to justify a conviction or a finding of guilty. These essential elements are as follows: First, that at the time of the offense charged in the indictment, that is to say August 26th, 1976, the defendant in question, Mr. Bailey, had been convicted of a felony.

Now, with respect to this first essential element of the offense, the Government has offered in evidence and the Court has received certified copies of the conviction and judgment and commitments in the case of Mr. Bailey, as the offense is charged in Count One, the defendant was convicted in the District of Maryland, United States Court for the District of Maryland.

And at the time the offense took place he was serving time for this conviction. He happened to be in the Dis-

trict of [802] Columbia because he was subpoenaed as a witness for another defendant whose case was being considered in the Superior Court for the District of Columbia.

The second essential element which the Government must prove beyond a reasonable doubt is that as a result of the conviction the defendant was committed to the custody of the Attorney General or designated representative, and was in custody at the time of the offense. The Government relies for proof of this essential element on the records of the District of Columbia Department of Corrections. As the Court earlier indicated to you, that so far as the defendants Bailey and Walker are concerned, a certified copy of a writ of habeas corpus ad testificandum. That is the means whereby a defendant may be brought from another jurisdiction to serve as a witness if he is subpoenaed by anyone.

Anyone can subpoena a witness if he is in litigation, and that is what the record shows in this case. He remains in the custody of the Attorney General to whom he was committed or committed in connection with the conviction previously mentioned.

The third essential element of the offense of escape as charged in the first three counts, the Federal Counts, is that the defendant escaped from such custody. The question is simply, whether the defendant without authorization did absent himself from his place of confinement. [803] You have heard the evidence in the case, both insofar as the documents are concerned, so far as the testimony of the defendants is concerned when they elected to take the stand as witnesses in their own behalf.

So, I would say to you as to procedure, take the general instructions the Court has given you. Take the facts as you find them. Make your determination as to whether the Government has proved each of the essential elements of the offense of escape. If you are satisfied that the Government has proved each of these elements beyond a reasonable doubt then you may find the defendant whose case you are considering and consider the cases individually and separately, you may find that defendant guilty.

On the other hand, if you have a reasonable doubt as to whether the Government has proved any one of these essential elements, then you must find that defendant not guilty.

Now, as the Court previously indicated to you when it defined the concept of intent, the intent which is involved in Section 751(a) of Title 18, the Federal Escape Statute. That intent is the general intent, and it means only that a defendant has the purpose to do something, the will to do the act. It means the act was done consciously and not inadvertently or accidentally.

So, ladies and gentlemen, so far as the counts involving these defendants, Count One, Count Two, and Count Three charged [804] each of these defendants with violation of the Federal Escape Statute, Title 18, Section 751(a).

If you find any one of these defendants guilty as charged under the Federal Escape Statute as the Court previously indicated to you, you may not consider the District of Columbia statute which charges prison breach. Although, if you find each defendant guilty of the federal violation charge in the first three counts your work is over and you will return your verdict to the Court.

Similarly, if you find any one of these defendants not guilty of federal escape, then and then only do you need to go on to consider Count Four, Five and Six, which charge a violation of the District of Columbia Statute known as Prison Breach.

\* \* \*

[806] Now, ladies and gentlemen, the question has been raised during the course of this trial as to conditions at the District of Columbia Jail. I wish to say this to you with respect to that institution:

You are instructed as a matter of law that conditions at the District of Columbia Jail or the new detention center, no matter how burdensome or restrictive an individual inmate may find them to be, are not a defense to the charges in this case, nor justification for the commission of the offense of escape.

If a particular inmate or group of inmates feel that they have been treated unfairly, they may seek correction of those conditions in the court system, but they are not entitled to commit the offense of escape or seek to take the law into their hands.

Now, the Court permitted the defendants to introduce this evidence and to seek to show that following their escape they turned themselves in, for if one, after escaping has turned himself in, then the defense of coercion or duress may be brought to the attention of the jury as a defense, but only if a defendant turns himself in.

Now, there are recognized procedures for this to be done, and requisite protections insured by such action. As the [807] Court heard the evidence, that was not done in this case. So the Court felt that it was incumbent upon the Court to assume responsibility for this aspect of the case, and to take it out of the case in effect. So, you are not to consider the defense of duress or coercion for the reasons stated. The defendants did not turn themselves in.

\* \* \*



THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Criminal No. 76-735-3

UNITED STATES OF AMERICA

v.

JAMES T. COGDELL, DEFENDANT.

Washington, D.C.  
May 6, 1977

The above-entitled matter came on for hearing on a Motion to Dismiss at 3:20 o'clock p.m., before:

HONORABLE OLIVER GASCH,  
United States District Judge.

APPEARANCES:

STEVEN SCHAARS, ESQUIRE,  
Assistant United States Attorney,  
Appearing on behalf of the Government.  
ALBERT OVERBY, ESQUIRE,  
Appearing on behalf of the Defendant.

[11] THE COURT: Now, we have a request for witnesses.

What is the expected testimony of the witnesses?

The Court, through its courtroom clerk, requested that information earlier.

MR. OVERBY: I am sorry?

THE COURT: The Court has previously requested the information with respect to the prospective testimony of the [12] witnesses.

MR. OVERBY: The testimony of the witnesses is as follows—

THE COURT: Individually, because I am not going to bring in all of these people. I want to know the substance of the testimony and its materiality.

MR. OVERBY: I cannot break them out individually myself, Your Honor.

THE COURT: When can you do that?

MR. OVERBY: I cannot do that until such time as I have an opportunity to talk to them.

THE COURT: Mr. Overby, we are hard on trial. And since the Stewart case in the D.C. Court of Appeals, all of this testimony that I permitted, not all the testimony but a great deal of the testimony that I permitted the three defendants to adduce is, in the Court's judgment, not material to the issue of escape.

MR. OVERBY: I understand that. I have read the transcript of the preceding trial.

THE COURT: If you read the Stewart case, you will understand precisely, and in brief context, the reason for that ruling.

MR. OVERBY: Yes, sir.

THE COURT: And I am not going to bring these witnesses into the courthouse unless I know what they are expected to [13] testify to. Conditions of the jail, no, that is not material.

The only issue is was he committed to the lawful custody of the Attorney General and did he escape from that custody. This is the only issue in the case.

MR. OVERBY: Is Your Honor ruling that with regard to any of those witnesses?

THE COURT: No. I want to know what you expect them to testify to.

MR. OVERBY: It is my understanding that the witnesses listed on that sheet can speak only to the conditions that led to Mr. Cogdell's departure from the jail.

THE COURT: That is not material.

MR. OVERBY: Very well, Your Honor.

\* \* \* \*

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Criminal No. 76-735-3

UNITED STATES OF AMERICA, PLAINTIFF,

v.

JAMES T. COGDELL, DEFENDANT.

Washington, D.C.  
May 9, 1977

The above-entitled matter came on for trial in open court at 10:05 o'clock, A.M., before:

THE HONORABLE OLIVER GASCH

United States District Judge, and a Jury.

\* \* \* \*

[11] MR. OVERBY: With regard to the proffer made by Mr. Cogdell last Friday, with regard to his list of witnesses, I take it that in the Court in its ruling, basing that ruling upon the Stewart case, at least in part, of the District of Columbia Court of Appeals, is taking into account all of the testimony heard by this Court in the case of United States v. Clifford Bailey, Ralph Walker, and Ronald Cooley, pertinent portions of the testimony on the prior trial, because it concerns escape on the same day under the same conditions.

THE COURT: Yes, sir.

MR. OVERBY: What I was going to suggest to the extent that the Court in ruling excluding the witnesses to be proffered by the Defendant Cogdell relied upon that trial, we believe that portion of the record should be incorporated into this record.

THE COURT: Yes. Well, let me state this: Of course, the Stewart case came down subsequent to the trial. The [12] Court mentioned to Chief Judge Newman of the District of Columbia Court of Appeals in a conversation he and I were having at breakfast together during the course of the trial, I guess, and he said, "By

the way we have had the same situation." "We expect an opinion shortly." "I will send you a copy of it." So, that was the basis on which I learned of the Stewart case. The Court feels that where one does escape from confinement for whatever reason in order to avail himself of the defense of duress or coercion he must turn himself in. The Court of Appeals said, immediately. The Court in considering the matter felt that that period of surrender must be within a reasonable time.

However, since Mr. Cogdell did not turn himself in either to the Virginia authorities or to the Federal authorities, the Court rules that he is not entitled to avail himself of the defense of coercion or duress.

MR. SCHAARS: Thank you, Your Honor.

MR. OVERBY: Your Honor, I think given the Court's ruling and given what counsel concedes to be the basic issue in the case, that at this point the record should reflect our proffer with regard to duress and the escape situation itself.

THE COURT: All right.

MR. OVERBY: Of course, Friday the Court ruled as you just indicated and in that connection we should like and do request that our letter addressed to Mr. Patterson be [13] incorporated and made a part of the record in this case.

THE COURT: All right.

MR. OVERBY: And we proffer you have seen it, haven't you? We proffer our copy to Mr. Patterson at this point with the Court's permission.

THE COURT: Certainly. Now, I take it as you indicated on Friday, Mr. Overby, that these witnesses whose names appear on the letter to Mr. Patterson to which you referred, these witnesses would testify in substance as to conditions at the District of Columbia Jail which led to Mr. Cogdell's decision that he was coerced or under duress as a result of which he did escape?

MR. OVERBY: That is correct, Your Honor, and in that—

THE DEFENDANT COGDELL: May I interpose something, please?

THE DEFENDANT COGDELL: In that conditions per se, I'm speaking of bodily harm. I have witnesses to



testify that I am—The conditions were conducive to do bodily harm to me and threats by the authorities and that my duress was a continuing process prior to my leaving, during, and also after I returned to the District of Columbia Jail. Those witnesses can verify that. Not so much as inmate witnesses as the authorities themselves, as recently as May 2nd when I was taken to the law library. I was taken to the law library [14] and the particular official saw me, directed me back to my cell and told the officers to jump on me, and that the state of duress has been continuously in my mind in terms of saying a proffer, did I contact anyone? I may be able to prove that. But, the Court is cutting me off even before I present anything. I may be able to present that. I may have—

THE COURT: Did you turn yourself in?

THE DEFENDANT COGDELL: I may have written letters.

THE COURT: That may be, what you may have done. What did you do?

THE DEFENDANT COGDELL: I think that should come out at trial if the Court permits me to present my witnesses and presenting the conditions and step by step, rather than putting the fifth before the first.

THE COURT: If you can't meet the fifth you can't eat.

THE DEFENDANT COGDELL: I may be able to—You're telling me I can't put the four, the first one on.

THE COURT: The Court's ruling stands.

MR. OVERBY: I take it, if I may, Your Honor, I take it that—well, I am not entirely sure, frankly does that mean that Mr. Cogdell would not be allowed to similarly testify in his own behalf?

THE COURT: As to what?

MR. OVERBY: As to one, the conditions and two, the [15] possibility that he made efforts to start the process of turning himself in.

THE COURT: He may state what he did, of course.

MR. OVERBY: Yes, sir. Thank you, Your Honor.

THE COURT: Not what he may have done.

MR. OVERBY: Very well, Your Honor.

• • • • •

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Criminal No. 76-735-3

UNITED STATES OF AMERICA, PLAINTIFF,

v.

JAMES T. COGDELL, DEFENDANT.

Washington, D.C.

May 10, 1977

The above-entitled matter came on for further trial in open court at 10:00 o'clock, A.M., before:

THE HONORABLE OLIVER GASCH

United States District Judge, and a Jury.

[110] Now, ladies and gentlemen, I wish to take up with you a concept of the law which we refer to as, intent. Intent means that a person had a purpose to do a thing. It means that he made an act of the will to do the same. It means the thing was done consciously and voluntarily, and not inadvertently or accidentally. Some criminal offenses require only general intent, and that is true, ladies and gentlemen, of the offenses charged in this indictment. Where this is so, and it is shown that a person has knowingly committed an act which the law makes a crime, intent may be inferred from the doing of the act. Now, intent ordinarily cannot [111] be proved directly because there is no way of fathoming or scrutinizing the operations of the human mind, but you may infer as to the Defendant's intent from the surrounding circumstances. You may consider any statement made or act done or omitted by a defendant and all of the facts and circumstances in evidence which indicate his state of mind. You may infer that a person ordinarily intends the natural and probable consequences of acts knowingly done or knowingly omitted. However, you should consider

all of the circumstances in evidence that you deem relevant in determining whether the Government has proved beyond a reasonable doubt the Defendant actually had the requisite intent, in this case, general intent. Now, we say that an act is done wilfully if it is done knowingly, intentionally, and deliberately. So much, ladies and gentlemen, for the general instructions in this case.

I will now take up with you the indictment and the instructions which relate particularly to the indictment. You are instructed as a matter of law that an individual held within the District of Columbia, Department of Corrections, pursuant to a court order of commitment or Writ of Habeas Corpus Prosequendam of the Superior Court of the District of Columbia is in the custody of the Attorney General of the United States.

Now, ladies and gentlemen, Mr. Cogdell, the Defendant [112] in this case, is charged in Count One of the indictment as follows: On or about August 26, 1976, within the District of Columbia, James T. Cogdell, having been in the custody under and by virtue of a commitment issued under the laws of the United States by a Judge of the Superior Court of the District of Columbia following his arrest on a charge of a felony, did unlawfully and willfully flee and escape from such custody, which would constitute a violation of Title 18 of the United States Code, Section 751(a). Now, the essential elements of the offense of escape from custody, each of which the Government must prove beyond a reasonable doubt in order to justify a verdict of guilty are as follows:

First, that at the time the offense, that is to say August 26, 1976, the Defendant in question had been in custody pursuant to a commitment issued under the laws of the United States. On that particular date there are certain copies of pertinent court papers on that particular element.

Second, that as a result of the commitment, the Defendant was committed to the custody of the Attorney General or his designated representative, and was in custody at the time of the offense. Insofar as this element is concerned, there are records of the District of Columbia, Department of Corrections, and a certified copy of the

Writ of Habeas Corpus ad Prosequendam. That is to say, these records have been received in evidence. You may examine them [113] in the jury room. You have previously been instructed as to the legal significance of the commitment, the Writs of Habeas Corpus as they pertain to the custody of the Attorney General or his authorized representative.

The third essential element is that the Defendant escaped from such custody. Insofar as the third essential element is concerned, that is escaping, the question is simply: Whether the Defendant, without authorization, did absent himself from the place of confinement. Thus, if you find that the Government has proven beyond a reasonable doubt each of the essential elements constituting the offense charged in Count One, you may find the Defendant guilty as charged.

On the other hand, if you have a reasonable doubt as to whether the Government has proved any one of these essential elements, then you must find the Defendant not guilty.



SUPREME COURT OF THE UNITED STATES

No. 78-990

UNITED STATES, PETITIONER,

v.

CLIFFORD BAILEY, ET AL.

and

UNITED STATES, PETITIONER,

v.

JAMES T. COGDELL

ORDER ALLOWING CERTIORARI. Filed March 19, 1979.

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.